TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, August 26, 2026, 3:00 p.m.
Courtroom 16 – Hon. Elliot L. Daum for Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.

Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV01213, Cavalry SPV I LLC as Assignee of Synchrony Bank v. Vasquez

APPEARANCES REQUIRED.

2. 24CV06214, Midland Credit Management Inc. v. Alton

The motion is GRANTED. Alton's default entered on January 28, 2025, is hereby set aside and vacated. Alton may file her proposed answer within 10 days of this order.
Alton is directed to submit an updated order consistent with this court's ruling.

3. 24CV06440, Landresse v. Blackpoint Management, Inc.

This matter is on calendar for the motion pursuant to Code of Civil Procedure section 377.31 to substitute in Debra Lee Graff ("Graff") as the plaintiff in this action due to the death of plaintiff Deanne Landresse ("Landresse") on February 6, 2026.

CCP section 377.31 provides: "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest."

Landresse filed this action on October 25, 2024, against Defendant Blackpoint Management Inc. dba Vintage Pointe Apartments ("Defendant"). The complaint alleges general negligence and premises liability based upon an injury sustained to Landresse on Defendant's property.

Landresse was married to Graff. Accordingly, Graff is Landresse's successor in interest. (Roth decl., ¶¶2-5, Exhibits 1, 2.)

The motion is GRANTED. Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

4. <u>24CV07189, Santos v. Chevron USA Inc</u>

This matter is on calendar for the motion of Plaintiff Magdalena Santos ("Plaintiff") for leave to amend her complaint.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." (CCP § 473(a)(1).) Judicial policy dictates the court's discretion be applied liberally to allow amendments. (*Nestle v. Santa Monica* (1972) 6 Cal. 3d 920, 939.) It is only when there is prejudice to the other side that cannot be alleviated by imposing conditions on the moving party that leave should not be allowed. (*Hirsa v. Sup.Ct. (Vickers)* (1981) 118 Cal. App. 3d 486, 490.)

The trial set for May 8, 2026, was vacated. The case management conference to reset this matter for trial has not yet been scheduled. No opposition has been filed showing prejudice. Accordingly, **the motion is GRANTED. Plaintiff may file and serve the proposed amended complaint within 10 days of this order.** In addition, this court hereby sets a case management conference for March 9, 2027, at 3:00 p.m. in Dept. 16.

This court's minute order shall constitute the order of this court.

5. <u>24CV07499, Solorio v. It's Just Us, LLC</u>

Plaintiff Esmeralda Valerio Solorio ("Plaintiff") moves on behalf of herself and all others similarly situated for an order: (1) Granting class certification of the Settlement Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382; (2) Preliminarily approving the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT ("Agreement"); (3) Appointing counsel for Plaintiff, Haulk & Herrera LLP, as Class Counsel; (4) Appointing Plaintiff as the Class Representative; (5) Approving the use of the proposed notice procedure and related notice form; (6) Approving ILYM Group, Inc. as the third-party administrator; (7) Directing that notice be mailed to the Settlement Class; and, (8) Scheduling a hearing date for motions for final approval of class action settlement and awards of attorneys' fees and costs.

I. Complaint

This action was filed on December 11, 2024. A First Amended Complaint was filed on January 7, 2025, and a Second Amended Complaint was filed on September 2, 2025. The Second Amended Complaint alleges causes of action for failure to provide meal and rest periods; failure to provide accurate wage statements; waiting time penalties for nonpayment of wages; violation of business and professions code section 17200; wrongful discharge in violation of public policy; retaliation in violation of the healthy workplace, healthy families act of 2014; and violation of the Private Attorney General Act ("PAGA").

The allegations are based upon Plaintiff's employment with Defendant It's Just Us, LLC dba Grossman's Nosheri & Bar. Plaintiff worked as a baker from September 2023 until her termination on October 7, 2024. Plaintiff alleged that during her employment, she typically worked between 8.5 to 9 hours per day, starting before 5:00 a.m. and ending at approximately 1:00 or 2:00 p.m. Despite working shifts exceeding eight hours, Plaintiff was only provided one 30-minute meal break per shift, which was often delayed beyond the fifth hour of work (as reflected in her time records). Plaintiff alleged she did not receive any rest breaks.

On October 5, 2024, Plaintiff became ill at work and left early. The following day, October 6, Plaintiff informed her supervisor that she remained unwell and intended to visit the hospital. Plaintiff alleges that when she insisted she was too ill to go to work, her supervisor fired her. She was reinstated for one day by the head chef but after she worked that day she was again terminated. She alleges the stated reasons were pretextual and were directly related to her taking time off of work due to her illness.

II. Legal Standards

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court must determine whether the settlement is fair, adequate, and reasonable. (*Id.,* at p. 1801.) The purpose of the requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Ibid*.)

"The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. [Citation.] The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citation.] "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation.]" (*Dunk v. Ford Motor Co*., supra, at p. 1801.)

A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.,* p. 1802.)

The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 250.) In making this determination, the court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement"' (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, citing *Dunk* at 1801.)

III. Settlement

Plaintiff requests certification of the class for settlement purposes, to which Defendant stipulates. This court does not see any reason why the class should not be certified for settlement purposes.

Plaintiff's counsel estimated total class damages and penalties to be as high as approximately $3,174,640 if Plaintiff were successful in certifying all of the claims and prevailing on the merits. (Haulk decl., ¶18.) The parties have agreed to settle this action for the Gross Settlement Amount of $600,000.00 for a release of the wage and hour claims alleged in the Second Amended Complaint. There are approximately 262 Class Members who will receive, on average, $1,261.45. (Haulk decl., ¶¶16, 32.) Class Members must opt out of the settlement. Mailed checks which remain uncashed after 180 days will be voided and the funds will be delivered to the California Controller's Unclaimed Property Fund in the name of the Class Member.

Plaintiff's counsel describes his investigation of the case, mediation efforts which led to the settlement, the need to weigh risks of litigation, and his experience in similar cases. (Haulk decl., ¶¶6-8, 12-24.)

IV. Enhancement Award

Plaintiff seeks an enhancement award of $7,500. Plaintiff and Plaintiff's counsel have provided declarations supporting the amount of the enhancement award.

V. Administration Expenses

The parties have agreed to use ILYM Group, Inc. as the Settlement Administrator. Administration expenses are not to exceed $7,000.

VI. Attorney's Fees and Expenses

Plaintiff's counsel request 35% of the Gross Settlement Amount, $210,000, and $12,500 in expenses.

VII. PAGA Penalties

The settlement provides up to $30,000 for PAGA Penalties, allocated 65% to the LWDA PAGA Payment and 35% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA biweekly Pay Periods.

VIII. Conclusion

Based upon the foregoing, this court finds the Settlement Agreement is fair, adequate, and reasonable. **The motion is GRANTED. A final fairness hearing is hereby set for March 17, 2027, at 3:00 p.m., in Department 16.**

The court will sign the proposed order.

6. <u>25CV04290, Guerrero v. Apple American Group LLC</u>

Defendants Apple American Group LLC ("Apple American") and Flynn Group (together "Defendants") move to compel Plaintiff Azucena Guerrero ("Plaintiff") to arbitrate her individual claims under the Private Attorneys General Act ("PAGA") and staying her non-individual PAGA claims pending resolution of arbitration. **The motion is DENIED.**

I. Evidentiary Objections

Plaintiff objects to portions of the declarations of Kevin D. Sullivan and Katrina Petkovic. Objection numbers 1 and 2 are based upon Plaintiff's position that the referenced paragraphs do not establish that Plaintiff reviewed or assented to the Arbitration Agreement set forth by Defendants. The June 3, 2025, letter referenced in objection number 1 and the statement referenced in objection number 2 were not offered for the purposes of authenticating the Arbitration Agreement. The objections are overruled.

Objection numbers 3 and 4 are overruled as the entire paragraphs are not objectionable. Mr. Sullivan is explaining meet and confer efforts and procedural history.

Objection number 5 is overruled. Ms. Petkovic is a Senior Human Resources Integrations and Change Manager who provides support to Apple American, and who oversees the onboarding process for new hires using a system called Paradox. (Petkovic decl., ¶¶1, 3.) Exhibit A is a copy of Plaintiff's profile and data from that system. (*Id.,* ¶18.)

Objection number 6 is overruled. Ms. Petkovic's position with Apple American presumably gives her knowledge of its corporate structure and its relationship to Flynn Group.

Objection numbers 7 through 16 are overruled. Ms. Petkovic's use of Paradox for her work with Apple American demonstrates her knowledge of that software system, how it is used in the onboarding process and during employee's employment, what the information in that system indicates, and how employees authenticate their identity when using Paradox to sign documents. The documents attached to Ms. Petkovic's declaration were retrieved from Paradox and can be authenticated as the documents signed by Plaintiff based upon Ms. Petkovic's description of Paradox's identity verification procedures.

II. Arbitration Agreement

Ms. Petkovic has laid the foundation for Plaintiff's signing of a Receipt of Dispute Resolution Program Booklet and Agreement to Abide by Dispute Resolution Program [Revised 2023] ("Arbitration Agreement"). (Petkovic decl., Exhibit C.) Plaintiff's electronic signature was created at 2:59:43 on March 20, 2024. (*Ibid*.)

The Arbitration Agreement states that the parties agree to arbitrate "all legal claims or disputes" ... "arising from my employment with the Company..." (*Id.,* ¶2.) It also states that the parties agree "that any arbitration between the Company and me will be on an individual basis and not as a representative, class or collective action." (*Ibid*.) The Arbitration Agreement states that the Federal Arbitration Act governs the interpretation, enforcement, and proceedings in arbitration. (*Id.,* ¶1.) The Spanish translation is also signed. (*Id.,* Exhibit C.)

Plaintiff notes that the Paradox pages for Plaintiff appear to contain a notation to the receipt of a January 2025 version of a Dispute Resolution Program. (*Id.,* Exhibit A.) However, Defendants are not attempting to enforce a January 2025 version of the Arbitration Agreement. The version they have presented with Plaintiff's signature is from 2023 and was signed by Plaintiff in 2024. (*Id.,* Exhibit C.)

Defendants have established the existence of an Arbitration Agreement.

In her declaration, Plaintiff states she does not remember signing the agreement, being told what she was signing, or understanding what rights she was giving up. However, the manner in which Plaintiff signed the Arbitration Agreement goes to Plaintiff's defense in enforcing it.

III. Delegation Clause

Defendants argue that the issue of the interpretation and application of the Arbitration Agreement have been delegated to the arbitrator. (Petkovic Decl., Ex. B, p. 31.)

Under both federal and state law, arbitration agreements are valid and enforceable, unless they are revocable for reasons under state law that would render any contract revocable. (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 239.) Reasons that would render any contract revocable under state law include fraud, duress, and unconscionability. (*Ibid*.)

The threshold issue of whether the proper entity to consider the validity of a delegation clause should be a court or the arbitrator was resolved in *Rent-A-Center*: "If a party challenges the validity ... of the precise agreement to arbitrate at issue, the ... court must consider the challenge before ordering compliance with that agreement...." (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 6371, 74.)

Here, Plaintiff challenges the enforceability of the Arbitration Agreement. This court must decide that threshold issue.

IV. Enforceability of Arbitration Clause by Flynn Group

Plaintiff argues that Defendants have not established that Flynn Group may compel arbitration as it is not a party to the Arbitration Agreement. Plaintiff's complaint states she was employed both by Apple American and Flynn Group, but it does not clarify the relationship between the two. Based upon the uncontroverted testimony of Ms. Petkovic, Flynn Group is the parent company of Apple American. The subject Arbitration Agreement states it is between Plaintiff and "the Company," which is defined as "Apple American Group LLC and Apple American Group II LLC (Flynn Applebee's) and all its current, future, and former subsidiaries, affiliate companies, related companies, and all successors and assigns of any of them (the 'Company[']), which is contained in the employee handbook." (Petkovic decl., Exhibit C, pg. 1.) Thus, the agreement is between Plaintiff and both Defendants.

V. PAGA Claim

Plaintiff argues that the parties did not agree to arbitrate Plaintiff's PAGA claim. Plaintiff's argument is based upon language in the Arbitration Agreement, which states: "We also agree that any arbitration between the Company and me will be on an individual basis and not as a representative, class or collective action." Plaintiff argues that all PAGA claims are representative in nature such that even individual PAGA claims cannot be arbitrated based upon the language in the Arbitration Agreement.

Viking River Cruises, Inc. v. Moriana (2022) 596 U.S. 639, 662, held that the FAA preempts the prior ruling in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 which precluded the division of PAGA actions into individual and non-individual claims through an agreement to arbitrate. *Viking River Cruises* rejected the argument that an individual PAGA claim is outside of a contractual arbitration clause due to its representative nature with the state.

The broad language of the Arbitration Agreement requiring arbitration of "all legal claims or disputes" between Plaintiff and Defendants encompasses individual PAGA claims.

VI. Unconscionability

The doctrine of unconscionability ' " 'refers to " 'an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.' " ' " ' [Citations.] There is both a procedural and substantive aspect of unconscionability; the former focuses on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results. [Citation.]

" ' "Both procedural and substantive unconscionability must be present for the court to refuse to enforce a contract under the doctrine of unconscionability although ' "they need not be present in the same degree." ' [Citation.] Essentially the court applies a sliding scale to the determination: ' "[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." ' " ' [Citation.]" (*Subcontracting Concepts (CT), LLC v. De Melo* (2019) 34 Cal.App.5th 201, 208.)

i. Procedural Unconscionability

" ' "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." ' " [Citation.]' " (*Subcontracting Concepts, supra,* at p. 210.) When an arbitration agreement is imposed on an employee as a condition of employment and there is no opportunity to negotiate, arbitration agreement is adhesive. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114-115.)

In her declaration, Plaintiff states that she usually needs employment documents to be translated or explained to her in Spanish to fully understand them. (Guerrero decl., ¶4.) Plaintiff remembers signing documents electronically through Paradox; however, she states she does not remember signing a Dispute Resolution Agreement. (*Id.,* ¶¶5-7, 32-40.) She also describes how managers required employees to sign electronic documents right on the job with little time to meaningfully review the document. (*Id.,* ¶¶7-27, 40-45.) She describes how she felt like she had to sign whatever documents Apple American required her to sign to keep her job. (*Id.,* ¶¶28-30.) She does not remember being given Spanish-language versions of the documents she signed or being given an explanation of what she signed. (*Id.,* ¶¶33-36, 43-48.)

Defendants' handbook specifically states that agreeing to the Arbitration Agreement is mandatory and a condition of employment. (*Id.,* Exhibit B, p. 26.) As in *Armendariz,* the Arbitration Agreement is procedurally unconscionable. "It was imposed on employees as a condition of employment and there was no opportunity to negotiate." (*Armendariz, supra,* 24 Cal.4th at p. 115.)

The failure to attach arbitration rules adds to its procedural unconscionability. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 244.)

ii. Substantive Unconscionability

The substantive element of the unconscionability analysis "looks to the actual terms of the parties' agreement to 'ensure[ ] that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as " ' "overly harsh" ' " [citation], " 'unduly oppressive' " [citation], " 'so one-sided as to "shock the conscience" ' " [citation], or "unfairly one-sided." ' [Citation.] These formulations 'all mean the same thing.' [Citation.] Substantive unconscionability ' "is concerned not with 'a simple old-fashioned bad bargain' [citation], but with terms that are 'unreasonably favorable to the more powerful party.' " ' [Citation.] 'The substantive component of unconscionability looks to whether the contract allocates the risks of the bargain in an objectively unreasonable or unexpected manner.' [Citation.] While private arbitration may resolve disputes faster and cheaper than judicial proceedings, it ' "may also become an instrument of injustice imposed on a 'take it or leave it' basis." ' [Citation.] ' "The courts must distinguish the former from the latter, to ensure that private arbitration systems resolve disputes not only with speed and economy but also with fairness." (*Hasty v. American Automobile Assn. etc.* (2023) 98 Cal.App.5th 1041, 1058–1059.)

"[T]he paramount consideration in assessing [substantive] unconscionability is mutuality." (*Id.,* at p. 1059.) The arbitration agreement in *Armendariz* was also substantively unconscionable because it lacked bilaterality; the employee had to arbitrate claims against the employer but the employer was not bound to arbitrate any dispute it might have against the employee. *Armendariz* explained that in the employment context arbitration agreements must contain a " 'modicum of bilaterality.' " (*Id.* at p. 117.) "Given the disadvantages that may exist for plaintiffs arbitrating disputes, it is unfairly one-sided for an employer with superior bargaining power to impose arbitration on the employee as plaintiff but not to accept such limitations when it seeks to prosecute a claim against the employee, without at least some reasonable justification for such one-sidedness based on 'business realities.' As has been recognized ' "unconscionability turns not only on a 'one-sided' result, but also on an absence of 'justification' for it." ' [Citation.] If the arbitration system established by the employer is indeed fair, then the employer as well as the employee should be willing to submit claims to arbitration. Without reasonable justification for this lack of mutuality, arbitration appears less as a forum for neutral dispute resolution and more as a means of maximizing employer advantage. Arbitration was not intended for this purpose." (*Armendariz, supra*, 24 Cal.4th at pp. 117–118.)

a. Dispute resolution clauses are read together

Section 1642 provides: "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together."

Arbitration and companion confidentiality agreements imposed in the same employment transaction must be considered together when they allocate forums and remedies. (*Cluck v. GEO Secure Services, LLC* (Cal. Ct. App., Aug. 3, 2026, No. D087341) 2026 WL 2224706, *8-*9.)

b. Mutuality

It is well settled that an arbitration agreement " 'is unfairly one-sided [if] it compels arbitration of the claims more likely to be brought by an employee, the weaker party, but exempts from arbitration the types of claims that are more likely to be brought by an employer, the stronger party.' [Citations.]" (*Silva v. Cross Country Healthcare, Inc.* (2025) 111 Cal.App.5th 1311, 1328.)

In addition to the Arbitration Agreement, Plaintiff points to the Confidentiality Agreement, Non-Disclosure Agreement, and Handbook Acknowledgement, citing pages 26-45, and 52 of the Handbook.

The Arbitration Agreement in both English and Spanish is located at pages 26 through 39. As relevant here, page 40 contains a "Confidentiality Agreement." The text of the Confidentiality Agreement merely states the employee will not disclose information confidential, proprietary, or secret in nature.

Starting at page 44 of the Handbook is Defendants' Non-Solicitation/Disclosure Agreement/Administrative Employees ("NDA") section, which also requires employees to refrain from disclosing confidential or proprietary information. This section contains the following paragraph: "Remedies Upon Breach: I recognize and acknowledge that in the event of any default in, or breach of any of the terms, conditions, and provisions of this Agreement (either actual or threatened) by me, Flynn Applebee's remedies at law shall be inadequate. Accordingly, I agree that in such events, Flynn Applebee's and/or the Flynn Applebee's Companies shall have the right to specific performance and/or injunctive relief, in addition to any and all other remedies and rights at law or in equity, and such rights and remedies shall be cumulative." (Petkovic decl., Exhibit B, p. 45.) The law of Delaware applies to such breach. (*Id.,* at p. 45.)

Based upon Civil Code section 1642, *Cluck,* and *Silva,* this court must consider the remedies required both by the Defendants' NDA and the Arbitration Agreement. In the former, Defendants may obtain specific performance and injunctive relief in a court of law while Plaintiff's remedies are limited to arbitration.

Defendants argue the NDA expressly states that it is its own agreement. This argument ignores Civil Code section 1642's mandate to read contracts relating to the same subject, parties, and transaction—here, dispute resolution of claims between Plaintiff and Defendants based upon Plaintiff's employment—as a whole.

c. Employee Concessions

Another substantive unconscionability is the employee's contractually mandated concessions in the Employment Agreement (without similar concessions in the employees' favor) that the confidentiality, non-compete and non-solicitation covenants are lawful, that any breach of those covenants "will cause irreparable harm" to Defendants (thereby justifying injunctive relief), that Defendants (but not the employee) is entitled to specific performance and/or injunctive relief. (See *Silva, supra,* at p. 1329.)

Defendants argue that the Arbitration Agreement is not substantively unconscionable because it allows either party to obtain injunctive relief in a court of law. A portion of the Arbitration Agreement at page 29 of the Handbook states: "Additionally, nothing in this Agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration conducted hereunder and either of us may apply to the appropriate state or federal court for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator."

This paragraph appears to this court as supportive of the lack of mutuality because Defendants are automatically allowed to pursue injunctive relief in a court of law based upon the causes of action Defendants would likely bring against an employee. However, employees are less likely to need to obtain injunctive relief against the Defendants.

In addition, page 30 of the Arbitration Agreement allows a party enforcing arbitration to obtain attorney fees and costs, which favors the Defendants as the claims they would seek to arbitrate would more likely be brought in a complaint filed by an employee.

Baltazar v. Forever 21, Inc. (2016) 62 Cal.4th 1237 is distinguishable. Like here, the plaintiff in that case was required to sign an arbitration agreement as a condition of her employment. (*Id.,* at p. 1241.) Unlike here, the agreement provided that, in the event a claim proceeds to arbitration, the parties were authorized to seek preliminary injunctive relief in the superior court. (*Ibid*.) The *Baltazar* court determined that this clause did not unreasonably favor the employer because it merely restated existing law under CCP section 1281.8(b), which provides: "(b) A party to an arbitration agreement may file in the court in the county in which an arbitration proceeding is pending, or if an arbitration proceeding has not commenced, in any proper court, an application for a provisional remedy in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without provisional relief. The application shall be accompanied by a complaint or by copies of the demand for arbitration and any response thereto. If accompanied by a complaint, the application shall also be accompanied by a statement stating whether the party is or is not reserving the party's right to arbitration." (CCP section 1281(b).)

The arbitration agreement in *Baltazar* did not contain the same language as in the Defendants' NDA wherein the Plaintiff was required to agree that an actual or threatened breach of the NDA agreement automatically allows Defendants to obtain specific performance and/or injunctive relief; and where Defendants are entitled to attorney fees to enforce the Arbitration Agreement.

Defendants argue that nothing in the NDA prohibits a non-frivolous challenge to the validity and enforceability of the Arbitration Agreement. However, this is a different issue. And a layperson is not likely to understand the intricacies that Defendants' state they intended in drafting the NDA.

Defendants also argue that the NDA agreement only applies to administrative employees. It argues this, at a minimum, creates an ambiguity as to the applicability of the non-disclosure provisions, which should be construed to avoid invalidity and unconscionability.

Where a contract is susceptible to two interpretations, one which renders it valid and the other which renders it void, a court should select the interpretation that makes the contract valid. (*Ayala-Ventura v. Superior Court* (2026) 119 Cal.App.5th 241, 256.) However, ambiguities in an adhesive contract are construed against the drafter. (*Id.,* at p. 255.)

Here, while the title of the NDA includes the words "Administrative Employees," the language of the agreement required Plaintiff to agree to the substance of that section, which appears applicable to all employees. It states: "In consideration of my employment by Apple American Group LLC and Apple American Group II LLC (Flynn Applebee's) and all its and their current, future, and former subsidiaries, affiliate companies, related companies, and all successors, I hereby agree as follows:." (Petkovic decl., Exhibit B, p. 44.)

The integrated documents further allocate enforceability disputes one-sidedly: Defendants contend Plaintiff must arbitrate challenges to the Arbitration Agreement, while the employer-favored NDA expressly contemplates judicial enforceability determinations. (Petkovic Decl., Ex. B, pp. 31, 45.)

Plaintiff argues the pre-arbitration requirements laid out in the Handbook also make the Arbitration Agreement substantively unconscionable because they allow Defendants a "free peek" at the employee's evidence.

The Handbook states at page 27: "When you have a work-related problem, follow the steps listed below in this policy." (Petkovic decl., Exhibit B, p. 27.) The first step tells employees that if they have a problem, they should first talk to their supervisor. (*Ibid*.) If this does not resolve the issue, or if the employee is not comfortable talking to the supervisor, the employee is told to take the concern to the Regional Manager, Director of Operations, or further up the chain of command. (*Ibid*.) Next is taking to HR and then to the Support Center. (*Ibid*.)

Step 2 states, if you have tried the Open Door Policy and are not satisfied, you may request the Executive Review Step. (*Ibid*.)

Step 3 states: "If you believe you have a legal claim that was not solved through the Open Door Policy or Executive Review, you may elect to proceed to this next step, which is Mediation. (*Id.,* at p. 28.) At Executive Review, an employee is directed to provide a written statement identifying the detailed factual basis, witnesses, documents, prior communications, unresolved concerns, and requested relief; Defendants' Executive then investigates and may speak with witnesses and review documents before issuing a written decision or recommendation. (*Id*. at p. 27.)

Defendants note that the first three steps do not state they are mandatory. Step 2 specifically states the employee "may" request the Executive Review Step. Step 3 states the employee "may" elect to proceed to mediation.

However, the language of Step four makes it appear that Steps 1-3 are required; it states: "If you have a work-related problem that involves one of your legally protected rights, which has not been resolved through the earlier steps, you may request Arbitration." (Petkovic decl., Exhibit B, p. 28.) In addition, the section regarding "mass arbitration" of 25 or more employees requires each of the individual claims to have exhausted the applicable "mandatory" program steps prior to filing a demand for arbitration. (Petkovic decl., Exhibit B, p. 31.) A breach of this section allows Defendants to recover attorney fees and costs. (*Ibid*.)

Plaintiff argues that Steps 1-3 do not toll the statute of limitations creating substantial risk. However, Step 3 also states that an employee may pursue mediation and arbitration simultaneously.

Plaintiff argues that the Delaware choice of law provision violates Labor Code section 925. That section prohibits requiring an employee to adjudicate outside of California a claim arising in California or depriving the employee of the substantive protection of California law with respect to a controversy arising in California. The non-disclosure agreement applies Delaware Law, which may not have the same protections as California.

Plaintiff argues the non-disclosure agreement violations Cal. Labor Code section 232.5, which prohibits an employer from requiring an employee to refrain from disclosing information about working conditions.

The Handbook required Plaintiff to agree not to disclose "any confidential or proprietary information of Flynn Applebee's or any business unit, division, parent, subsidiary or affiliate of Flynn Applebee's to any person, firm, corporation, association or other entity (other than to authorized persons at the Apple American Group LLC and Apple American Group II LLC) for any reason or purpose whatsoever..." (Petkovic decl., Exhibit B, p. 44.) The Handbook defines "confidential or proprietary information" as "any and all non-public information that any of the Flynn Applebee's Companies and/or their employees, agents, and/or representatives have disclosed or may disclose to [employee] including but not limited to information related to: guests, prospective guests, vendors, personnel, recruiting, retention, internal communications, events, or meetings, or any other research, development, operations, marketing, transactions, regulatory affairs, discoveries, inventions, methods, processes, data, strategies, plans, pricing, prospects, know-how and ideas, whether tangible or intangible, and including all copies, analyses and other derivatives thereof." (*Ibid*.)

This broad definition of confidential or propriety information would appear to encompass working conditions that are not observable by the public at large, including wages, which violates Labor Code 232. (*Alberto v. Cambrian Homecare* (2023) 91 Cal.App.5th 482, 493.)

The non-retention of material agreement requires employees upon conclusion of their employment to return all Flynn Applebee property including, "all manuals, letters, communications, notes, notebooks, manuals, price lists, vendor lists, personnel information, reports, and copies thereof and any and all other materials of a confidential or proprietary nature relating to the Flynn Applebee's Companies' business that are in [employee's] possession, custody, or control." (Petkovic dec., Exhibit B, p. 45.) This clause also appears at hindering employee's remedial rights.

The inclusion of a waiver of unwaivable PAGA actions is also substantively unconscionable. (*Alberto, supra,* at p. 494.)

Plaintiff also argues that the Arbitration Agreement expands Labor Code section 2699's right to attorney fees. Labor Code section 3699(k)(1) provides: "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part."

The Arbitration Agreement allows the Defendants to obtain attorney fees on any statutory claim, thereby expanding what is allowable under Labor Code section 2699 and creating a disadvantage to arbitrate PAGA claims.

Plaintiff argues that the Arbitration Agreement includes a broad statement that employees are waiving their right to a jury, which is unlawful for those claims that the parties have not agreed to arbitrate. (*Dougherty v. Roseville Heritage Partners* (2020) 47 Cal.App.5th 93, 107.) However, the jury waiver language is in the Arbitration Agreement and appears intended to merely highlight the fact that arbitration means an employee is giving up a trial by jury.

Overall, the dispute resolution clauses in the Arbitration Agreement and NDA are unconscionable.

VII. Severability

Once a trial court has determined that a "contract or any clause of [a] contract" is unconscionable, the court has discretion whether to "refuse to enforce the contract," "sever any unconscionable clause," or "limit the application of any clause to avoid unconscionable results." (*Silva, supra,* at p. 1330.)

" 'Even if a contract *can* be cured, the court should also ask whether the unconscionability *should* be cured through severance or restriction because the interests of justice would be furthered by such actions.' [Citation.] In this analysis, the court may consider whether severance would incentivize the 'employer to draft a one-sided arbitration agreement in the hope employees would not challenge the unlawful provisions, but if they do, the court would simply modify the agreement to include the bilateral terms the employer should have included in the first place.' [Citation.] A court should not enforce an agreement where it appears the employer 'engaged in a systematic effort to impose arbitration on the [employee] not simply as an alternative to litigation, but to secure a forum that works to the [employer's] advantage.' [Citation.]" (*Cluck v. GEO Secure Services, LLC, supra,* 2026 WL 2224706, at *9.)

This court finds severance is not the appropriate course of action. Unfairness strikes at the heart of the overall agreement between the parties. As such, severance would not be in the interests of justice. (See *Cluck, supra,* at p. *10.)

VIII. Conclusion

Based upon the foregoing, the motion to compel arbitration is denied.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

7. <u>25CV08769, Cupp v. Adams</u>

This matter is on calendar for the motion of Defendant Mark Adams to strike the Amended Petition of Petitioner Ronald Cupp on the grounds that all causes of action therein are subject to California's anti-SLAPP statute (CCP section 425.16) and Petitioner cannot prevail on his claims as a matter of law.

On August 19, 2026, this court sustained Defendant's demurrer to the Amended Petition without leave to amend. Accordingly**, this motion is dropped as MOOT**.

8. <u>25CV08885, Vargas Flaherty v. Kerston</u>

Plaintiffs Casilda Vargas Flaherty and Christopher Flaherty ("Plaintiffs") move for leave to file a First Amended Complaint. The motion is made on the grounds that the caption inadvertently omitted three defendant categories. The proposed amendment does not add new parties, causes of action, or substantive allegations.

The motion is GRANTED. Plaintiffs may file and serve their first amended complaint within 10 days of this order.

The court's minute order shall constitute the order of this court.

9. <u>SCV-270409, Fischer v. Fischer</u>

Defendant Janice Chaney ("Defendant") moves for an order correcting nunc pro tunc the date of entry of judgment in this action from January 2, 2026, to March 10, 2026.

Defendant's motion is based upon the filing of an Abstract of Judgment on March 10, 2026. The Judgment After Court Trial was entered on January 2, 2026. While Defendant notes that the statement of decision was finalized on March 17, 2026, this does not affect the date of entry of judgment. A statement of decision merely addresses the factual and legal basis for its decision. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125.)

In reply, Defendant objects that the proposed judgment indicates it was filed on December 26, 2025, but then based upon Plaintiff's counsel's call to this court, was corrected to indicate it was filed on January 2, 2026.

The proposed judgment was inadvertently filed by the court clerk upon its receipt instead of merely lodging it. As it had not yet been signed by a judicial officer, it should not have been filed. Once the clerk's office learned of the error, it corrected it.

Defendant's motion is DENIED.

The court's minute order shall constitute the order of the court.