TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 15, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

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1. 24C00069, American Express National Bank v. Neese

Plaintiff American Express National Bank ("Plaintiff") filed the complaint in this action against defendant Mark Neese ("Defendant"), with a cause of action for common counts. This matter is on calendar for Plaintiff's motion pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement filed January 9, 2025 (the "Agreement") to enter judgment in the case in the amount of $4,093.92, as Defendant has defaulted on the agreement. There is no opposition to the motion.

The Motion is **GRANTED.**

I. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b)

provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. A motion to enforce a settlement agreement under CCP § 664.6 must show there is an agreement signed by all the parties to the agreement, not just the parties against whom the agreement is sought to be enforced. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37.

Where the terms of a settlement are disputed in a CCP § 664.6 motion, the court has the authority to adjudicate those disputes based on declarations or other evidence. *Malouf Bros. v. Dixon* (1991) 230 Cal.App.3d 280, 284. However, the court does not have the authority to modify the terms of the agreement. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. Extrinsic evidence is admissible in ruling on a motion under CCP § 664.6. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 992.

II. Analysis

Plaintiff moves the Court for a judgment pursuant to the Agreement. Plaintiff asks for $762.79 in principle, and $379.96 in costs. The Agreement states that Defendant owes $9,873.96. The Agreement states that Defendant is to receive credit for any and all payments made. Defendant was to make monthly payments under the terms of $308 per month starting on April 19, 2024, with a final payment of $322 due on March 19, 2025. Plaintiff was entitled to a discount resulting in early payoff if he made all timely payments. Agreement ¶ 4. Plaintiff avers that Defendant made his last payment on the credit account on December 19, 2025, having missed the payment for the preceding month. Defendant paid a total of $6,160.00. See Counsel's declaration ¶ 7.

The motion is unopposed. The Agreement states that upon Defendant's failure to make a timely payment, Plaintiff will be entitled to "immediately" "pursue all available remedies", including "have judgment entered against Defendant for $9,873.96, plus court costs, less any payments by Defendant." Agreement ¶ 6. This appears sufficient to place Defendant on notice that payments are due. The time for payment on all of Defendant's payments has passed before the hearing on the motion. Therefore, the amounts of $3,713.79 in principle, and $297.61 in costs are appropriate.

Therefore, the Motion is **GRANTED. Judgment will be entered in the amount of $4,093.92.**

The Court will execute the proposed Order on the Motion for Entry of Judgment and the proposed Entry of Judgment after this tentative ruling is adopted.

2. <u>24CV05325, Mills v. FCA US LLC.</u>

Plaintiff Jessalee Mills ("Plaintiff") filed the complaint (the "Complaint") against defendants FCA US, LLC ("Manufacturer"), Cardinale Chrysler Dodge Jeep Ram Santa Rosa ("Dealer"),

Redwood Credit Union ("Lender, all defendants together, "Defendants") and Does 1-10 for alleged violations of the Song-Beverly Act (the "Act") as to Plaintiff's 2022 Jeep Gladiator (the "Vehicle"). This matter is on calendar for Plaintiff's motion pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the attached settlement agreement and release of claims (the "Agreement") to order Defendants to pay Plaintiff the sum of $150,000 pursuant to the terms of the Agreement, plus prejudgment interest. The Motion is **GRANTED in part**.

I. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b) provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733.

II. Analysis

Plaintiff avers that the basis for the Motion is that Manufacturer allegedly did not make all of the required payments due under the Agreement and has refused to take repossession of the vehicle. Manufacturer avers that Plaintiff failed to sign all required paperwork for the transfer of title, and accordingly there was no breach of the Agreement resulting from Manufacturer's conduct, and that Plaintiff's subsequent payoff of the loan on the Vehicle has necessitated the execution of a new settlement agreement, as repayment of the loan was a material term that Manufacturer was supposed to perform.

The parties executed the release agreement (Declaration of John Hendrickson, Ex. A [the "Agreement"]) with signatures by Plaintiff on September 21, 2025, and Manufacturer's representative on September 25, 2025. The Agreement required Manufacturer to pay $150,000 to Plaintiff by November 18, 2025. This included amounts to be used for loan payoff. In return, Plaintiff was required to return the Vehicle to Manufacturer at a locally authorized dealer within 60 days of the Agreement. Additional terms of the Agreement are not contested here. Manufacturer does not dispute that no payment has been made to Plaintiff under the Agreement. However, Manufacturer disputes that Plaintiff has attempted to return the Vehicle as required. Plaintiff seeks an order for entry of a judgment for the payments due under the Agreement for a total of $150,000. Plaintiff also seeks prejudgment interest running from the date of the breach.

It appears proper to remind the parties that at such time that a settlement has been reached, the Rules of Court **require** Plaintiff to provide notice of that settlement, conditional or otherwise, "immediately". See Cal. Rule of Court, Rule 3.1385 (a)(1). Failure to follow Rules of Court is potentially sanctionable. Cal. Rule of Court, Rule 2.30. Given that no dismissal was filed, the Court appears to have jurisdiction despite the parties' failure to provide for a retention of

jurisdiction within the agreement. See *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440 (if the parties have requested dismissal, for the court to have jurisdiction, the request to retain jurisdiction "must be express, not implied from other language, and it must be clear and unambiguous."). There need not even be breach of the agreement. *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1185.

The parties each make factual contentions regarding what occurred on at November 17, 2025 appointment. Plaintiff argues that all required paperwork was completed, but that Manufacturer asked that extraneous paperwork be completed, which Plaintiff refused to do. Plaintiff does not identify the supposedly unnecessary forms. Indeed, no declaration from Plaintiff is offered at all. Meanwhile, Manufacturer avers that the forms were necessary but similarly offers no specificity of what forms were completed and what forms were omitted. Moreover, the only evidence tendered by Manufacturer is the declaration of counsel, who does not purport to be a witness to the aborted exchange. Indeed, the declaration repeatedly avers that the attempted exchange occurred on November 18, 2025, which is rebutted by documentary evidence submitted by Plaintiff. Given that neither party submits competent evidence on the issue, the Court is left with insufficient information to make any determination on whether Plaintiff's refusal to complete the forms constitutes a breach of the Agreement. As subsequent analysis shows, this is unnecessary to the determination of whether Manufacturer is in breach, and whether there is an enforceable agreement as would be required for CCP § 664.6.

Manufacturer's position that it did not breach is frivolous and not reflective of any of the language contained in the Agreement. Manufacturer avers that Plaintiff's failure to return the vehicle at the appointment on November 17, 2025, means that the failure to pay was not breach. While the appointment was before Manufacturer's November 18, 2025, date by which Manufacturer was required to make payment under the Agreement, that was not the date by which Plaintiff was required to surrender the vehicle. The Agreement states that Plaintiff is required to return the Vehicle, and "sign all papers necessary for (Manufacturer) to transfer title" "within 60 days from the date of this Agreement". Manufacturer executed the Agreement on September 25, 2025, which ostensibly is therefore the date of the Agreement, as that is the date it became binding on both parties. Sixty days from September 25, 2025, was November 24, 2025. Given that Plaintiff's performance was not due at the time of the attempted exchange, Manufacturer's refusal to tender payment on or before November 18, 2025, is a clear breach of the Agreement.

To Defendants' contention that a new agreement must be executed because the original agreement provided for Manufacturer to pay off the loan amounts due grossly overstates the prevalence of any relevant language within the Agreement. The Agreement is a sparse page and a half of text, and mention of the "loan" appears once. That sentence provides in full, "The repurchase and loan pay off will be completed no later than November 18, 2025." In contrast, the first sentence of the Agreement clearly provides that "(i)n consideration of the payment by (Manufacturer) of the sum of $150,000, paid in full no later than November 18, 2025, … "payable to (Plaintiff)". When Plaintiff paid off the loan, it was after Manufacturer had failed to perform the loan payoff timely under the Agreement. Manufacturer does not provide any authority showing that they may weaponize their own breach of the Agreement to void the Agreement because Plaintiff undertook necessary actions to minimize damages. Had Plaintiff

failed to maintain the loan, and requested further consequential damages from Manufacturer, it appears certain that they would be arguing that such damages are not recoverable because Plaintiff failed to minimize them. Second, the Agreement *barely* mentions the loan and certainly does not contain any concrete provision regarding dispensation of funds to Lender in a particular amount which they now cannot perform. The consequence of there being no loan operates naturally to allow another material term to follow the direct language in the Agreement, that $150,000 is "payable to (Plaintiff)". No other construal is possible.

Plaintiff also requests prejudgment interest of 10% running from the date of the breach until satisfaction of the Agreement under Civil Code § 3287 and 3288. Plaintiff offers no authority for the application of these sections to judgments entered under CCP § 664.6. Plaintiff's citations appear contradictory, as § 3287 relates to contractual matters, and § 3288 relates to non-contractual awards of interest "in the discretion of the jury". Plaintiff offers no elucidation applying *either* provision, and neither is persuasive. No finding of fact has occurred, this is a judgment entered on settlement, therefore application of § 3288 appears improper. § 3287 fares no better, as such interest was not included in the Agreement, and therefore it is not capable of entry as part of the judgment under § 664.6. *BTHHM Berkeley, LLC v. Johnston* (2024) 100 Cal.App.5th 1220, 1225.

Therefore, the Motion is **GRANTED**. Plaintiff will submit a judgment in conformance with the agreement, requiring Defendant's payment in exchange for Plaintiff's return of the vehicle and execution of all required papers to transfer title. The request for prejudgment interest is DENIED.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter Plaintiff will submit a judgment in conformance with the Agreement.

3-4. <u>25CV02465, Msalam v. Auto Car, Inc.</u>

Plaintiff Ghassan Msalam ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants American Honda Motor Co., Inc., ("Manufacturer"), Auto Car., Inc. ("Dealer", together with Manufacturer, "Defendants") and Does 1-10. The Complaint contains causes of action for: 1) breach of express warranty under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act"); and 2) breach of the implied warranty under the Act.

This matter is on calendar for the motion by Plaintiff to compel further responses from Dealer to form interrogatories ("FIs") and special interrogatories ("SIs") under CCP § 2030.300. The motion is **GRANTED in part, and DENIED in part**. The requests for sanctions thereon are GRANTED.

I. <u>Procedural Issues</u>

Dealer contends that Plaintiff has failed to adequately meet and confer on the motion, but that is not supported by their evidence. Dealer avers that the parties conferred on seven separate

occasions. As the Court analyzes below, Plaintiff's intractability after such extensive meet and confer efforts on these issues is likely related to the general lack of merit to Dealer's position.

The Court also notes that Plaintiff's separate statement asks to compel further responses to FI ¶ 17.1 but does not provide the relevant requests for admission. "If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth". Cal. Rule of Court, Rule 3.1345 (c). The Court realizes that four discovery motions were properly filed as separate papers the same day, and their division across multiple calendars was likely unexpected. However, the purpose of a separate statement is for the Court to have a "document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue." Cal. Rule of Court, Rule 3.1345 (c). The Court's analysis on the merits is made more difficult, but not impossible, due to this omission.

II. Governing Law

A. Discovery Generally

The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. "California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. ("For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.* Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378. Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140.

B. Interrogatories

Regarding interrogatories, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." CCP §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c).

Upon receipt of a response, the propounding party may move to compel further response if it deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. CCP §2030.300(a). Any motion to compel further answers to interrogatories must be filed within 45 days of receipt of response unless the parties agree to extend the time in writing. CCP § 2030.300 (c). When such a motion is filed, the Court must determine whether responses are sufficient under the Code and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.

C. Sanctions

CCP § 2030.300(d) (relating to interrogatories) provides that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

III. Analysis

Plaintiff moved to compel further responses to Form Interrogatories and Special Interrogatories on January 20, 2025.

A. Special Interrogatories

Dealer's responses to SIs ¶ 1 and 3 are both clearly not sufficiently answered, and accordingly good cause exists to compel further responses. SI ¶ 1 has an answer which clearly does not relate to the interrogatory posed, making contentions about repurchase requests instead of who participated in the sale of the Vehicle to Plaintiff. The sale of the vehicle is relevant to the representations made to Plaintiff at the time. SI ¶ 3 is clearly answered in an incomplete manner.

Good cause exists to compel further responses. The burden on these requests therefore shifts to Dealer. *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.

As to SI ¶ 2, Dealer has asserted the same boilerplate objections which fail to be persuasive. However, the response thereafter states documents will be provided under CCP § 2030.230, and proceeds to clearly identify what documents are arguably responsive to the interrogatory request. Plaintiff only argues as to the objections but provides no elucidation of whether the documents are responsive to the request. Given that Plaintiff cannot identify what substantive portion of the response inadequately answers their interrogatory, no good cause exists to compel further responses.

Turning to Dealer's objections, they are meritless, and Dealer's opposition makes no effort to make the requisite showing to justify such boilerplate contentions of overbreadth, vagueness, and irrelevance. *West Pico Furniture Co. of Los Angeles v. Superior Court In and For Los Angeles County* (1961) 56 Cal.2d 407, 417; *Toshiba America Electronic Components v. Superior Court* (2004) 124 Cal.App.4th 762, 773. They are facially meritless. The burden is on Dealer to justify the objections. *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255. Boilerplate objections are sanctionable conduct.

Further responses must be compelled as to SIs ¶ 1 and 3.

B. Form Interrogatories

The form interrogatories come to a similar result. Plaintiff moves to compel as to FIs ¶ 3.1, 12.1 and 17.1.

As to FI ¶ 3.1, Dealer has clearly copied and pasted a form interrogatory targeted to *their corporate identity* and instead responded with the information for Manufacturer. Their attempted explanation further reflects the haphazard manner in which they "copy and paste", as Dealer copied and pasted this argument into their oppositions to both motions on calendar, despite no application to the Special Interrogatories. The assertion that the answer as to their corporate identity is full and complete when the information is clearly inapplicable to Dealer is without merit. Good cause exists to compel further responses to FI ¶ 3.1.

In contrast, FI ¶ 12.1 is indicative of the weaknesses of both sides. Plaintiff is unmistakably correct that the response as to subsection 1 is incomplete, reflecting a lack of contact information for percipient witnesses which were employees of Dealer. This is clearly and obviously within Dealer's capacity to answer. Their failure to do so, and intransigence in insisting that the response is sufficient is incapable of justification. In contrast, for subsections 2 and 3, Dealer opines that based on documents, there were other repair facilities at issue, and that they provided the information in their possession based on those documents. They aver no further custody or control of the required information to provide additional response. Plaintiff treats these responses as identically insufficient, but that is clearly not the case. Dealer clearly identifies that they have no further information, and a reasonable explanation for why that is the case. Plaintiff fails to show how the responses to subsections 2 and 3 are insufficient as a result. Only further responses to FI § 12.1, subsection (1) has good cause displayed, amended responses to all other subjections are denied.

Dealer's responses to FI ¶ 17.1 are shockingly deficient. To RFAs 3-5, Dealer provides no substantive response to the FI, merely asserting by reference their boilerplate paragraph interposed above. As the Court has raised above, Plaintiff's Separate Statement does not provide the RFAs, but the insertion of a boilerplate paragraph is so clearly lacking in merit that good cause is apparent, even before the Court reaches the most substantive deficiency below. ***The continued practice of responses to form interrogatories laden with the detritus of boilerplate objections to the form of the question for which the responding party has no justification thereon is sanctionable conduct.*** *Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516. For RFAs 8-11, Dealer merely avers that they lack sufficient information to admit the matters. In either instance, the averred reason for compelling further responses that Plaintiff provides is that they are bereft of information, in part because Dealer **responded to the RFAs propounded to Manufacturer instead of their own**. Given that the response to FI ¶ 17.1 is predicated entirely on the wrong RFAs, there is clearly good cause to compel even as to those where Dealer professes no evidence, as they inaccurately recount what matters they lack knowledge. Even if that were not the case, while Dealer opines that they based the assessment on the "information known or reasonably available", which is precisely what this FI requires them to identify.

Again, Dealer offers no substantive justification for their objections, which are copied and pasted without any reasoning thereon. They are overruled and further responses are required as to FIs ¶ 3.1, 12.1 subs. (1), and 17.1.

C. Sanctions

Turning to the propriety of sanctions, the motion is the result of Dealer's failure to produce sufficient responses, which necessitated Plaintiff's motion. Monetary discovery sanctions are intended to be compensatory for discovery abuse. Dealer's contentions regarding substantial justification are not persuasive for the same reasons that their answers were insufficient. This is not a windfall but an abrogation of the harm imposed by being forced to bring motions for obviously deficient responses. The subsequent attempts to oppose on frivolous grounds does nothing to show substantial justification. As such, sanctions are mandatory.

The notice of motion only requests sanctions against Dealer, and not their counsel. Sanctions are therefore only capable of imposition against Dealer. Plaintiff seeks $949.22 for each of the motions compelling further responses from Dealer. Plaintiff has prevailed in a similar manner as to both motions, and therefore sanctions as to each appears appropriate. Counsel requests a rate of $350 per hour, with 2.5 hours for per motion. The motion also has a filing fee of $60, and an e-filing cost of $14.22. Two and a half hours per motion appears reasonable. Counsel's fees are not excessive. The fees and costs related to filing are actual and reasonable.

Therefore, the Court finds appropriate sanctions of $1,898.44.

The motions are GRANTED as to sanctions. Plaintiff's requests for sanctions against Dealer is GRANTED in the amount of $1,898.44. Dealer is to pay this amount within 30 days.

IV. Conclusion

The Motion to compel further responses to FIs is **GRANTED** as to FIs ¶ 3.1, 12.1 subs. (1), and 17.1. The Motion to compel further responses to SIs is **GRANTED** as to SIs ¶ 1 and 3 and **DENIED** as to SI ¶ 2. Plaintiff's requests for sanctions against Dealer is **GRANTED** in the amount of $1,898.44. Dealer is to pay this amount within 30 days.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. 25CV05117, Belluomini v. A0690 Windsor LP

Plaintiff Brandon Belluomini ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants A0690 Windsor LP ("Windsor"), Buckingham Property Management ("Buckingham"), Nations Finest ("Nations"), Urban Housing Communities ("Urban", together with all other defendants, "Defendants"), and Does 1-50. Default was entered against Windsor and Buckingham on December 1, 2025 and October 23, 2025 respectively. This matter is on calendar for the motions by Buckingham and Windsor ("Moving Defendants") under Code Civ. Proc. ("CCP") § 473 (b) to set aside the default on the basis of mistake, inadvertence or excusable neglect. The Motion is **GRANTED**.

I. Procedural History

Buckingham was served via personal service on September 19, 2025. Windsor was served by personal service on October 17, 2025. Plaintiff requested to take Buckingham's default on October 23, 2025. Plaintiff's request for Windsor's default followed on December 1, 2025. Moving Defendants filed the instant motion for relief from default on January 26, 2026.

II. Governing Law

> "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

CCP § 473 (b).

"Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233. "Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-55.

Courts will generally indulge all presumptions and resolve all doubts in favor of orders setting aside defaults and an order setting aside a default under section 473 will not be reversed unless the record clearly shows an abuse of discretion. *Pearson v. Continental Airlines* (1970) 11 Cal.App.3d 613, 619. "(A)s for inadvertence or neglect, '[t]o warrant relief under section 473 a litigant's neglect must have been such as might have been the act of a reasonably prudent person under the same circumstances. The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it is wholly inexcusable it does not justify relief.'" *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206. "[A]lthough the party moving for relief under section 473 has the burden to show that the mistake, inadvertence, surprise, or neglect was excusable (*Citations*), any doubts as to that showing must be resolved in favor of the moving party." *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1420 (internal citations omitted).

III. Moving Defendant makes sufficient showing for relief under CCP § 473(b).

Moving Defendants aver that they attempted to obtain representation (a necessity given their entity status) as soon as service occurred but had difficulty finding an attorney to represent them until December. They also contend that they were never given notice of their default, which further explained their delay in bringing this motion.

Given their inability to appear absent counsel, the struggle to obtain appropriate representation appears to be excusable neglect. This appears true especially considering the failure to serve the proofs of service of process on the Moving Defendants, without which they could not calculate their date of possible default. There is adequate reason to set aside the default.

Plaintiff has filed no opposition. Plaintiff therefore displays no prejudice, as other defendants have filed answers and there does not appear to be any additional delay resulting from setting aside Moving Defendants' default.

Therefore, based on a showing of excusable neglect, set aside is proper. Moving Defendants' motion is GRANTED.

IV. Conclusion

Based on the foregoing, motion is **GRANTED**.

Moving Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 25CV07309, Buboltz v. CBRE, Inc.

Plaintiff Ken Buboltz ("Plaintiff"), filed the complaint against defendants CBRE, Inc. ("CBRE"), Brian Smith ("Smith", together with CBRE, "Defendants"), and Does 1-100 for causes of action arising out of Defendant's alleged Labor Code violations (the "Complaint").

This matter is on calendar for the petition (styled as a "motion") by the Defendants to compel arbitration pursuant to Federal Arbitration Act ("FAA"), 9 USC §§ 1-16. The motion is **DENIED**.

I. Facts and Procedure

This matter arises out of an employment relationship between the parties. Plaintiff worked for CBRE or its predecessors from 1992 until his termination. Defendants aver that Plaintiff signed an offer letter after a corporate merger in 2015. See Declaration of Julie Richey ("Richey Dec."), Ex. A (the "Agreement"). The Agreement has a date of August 24, 2015. The Agreement contains an arbitration clause which appears as follows:

> In the event of any dispute or claim between you and CBRE (including all of its employees, agents, subsidiary and affiliated entities, benefit plans, benefit plans' sponsors, fiduciaries, administrators, affiliates; and all successors and assigns of any of them), we jointly agree to submit all such disputes or claims to confidential binding arbitration and waive any right to a jury trial. The claims and disputes subject to arbitration include all claims arising from or related to your employment or the termination of your employment including, but not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for discrimination (including, but not limited to, race, sex, religion, national origin, age, marital status, or medical condition or disability); claims for benefits (except where an employee benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one); and claims for violation of any federal, state, or governmental law, statute, regulation, or ordinance. All claims or disputes subject to arbitration, other than claims seeking to enforce rights under Section 7 of the National Labor Relations Act, must be brought in the party's individual capacity, and not as a plaintiff or class member in any class, collective, or representative action. The arbitration (i) shall be conducted pursuant to the provisions of the Federal Arbitration Act; and (ii) shall be heard before a retired State or Federal judge in the county containing the Company's office in which you were last employed. The Company shall pay for all fees and costs of the Arbitrator; however, each party shall pay for its own costs and attorneys' fees, if any, except as otherwise required by law.

Agreement, pg. 2 "Arbitration".

The Agreement states that Plaintiff should "(p)lease print, sign and return your acceptance on or before your first official day as a CBRE Employee…". Agreement, pg. 3. The expected first day was September 1, 2015. The Agreement bears a signature purported to be Plaintiff's, signed August 26, 2015. *Id*. at pg. 3. Plaintiff does not factually challenge that he signed the Agreement. Defendants contend that they are engaged in interstate commerce, and that therefore the Arbitration Agreement is governed by the Federal Arbitration Act ("FAA").

II. Evidentiary Issues

Plaintiff's objections in opposition ¶ 1, 2, 3, 5, and 6 are OVERRULED. As to 2 and 3, Plaintiff concedes in his declaration that he signed the Agreement, and so the foundation thereon is otherwise laid. Objection ¶ 4 is SUSTAINED, but as the Court notes below, there is nonetheless factual support for the conclusion, regardless of the inadmissibility of Defendants' evidence.

III. Governing Law

A. Compelling Arbitration

A party seeking to compel arbitration pursuant to CCP § 1281.2 must "plead and prove a prior demand for arbitration under the parties' arbitration agreement and a refusal to arbitrate under the agreement." *Mansouri v. Sup. Ct*. (2010) 181 Cal.App.4th 633, 640-641. "The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute." *Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209; see also, *Engalla v. Permanente Medical Group, Inc*. (1997) 15 Cal.4th 951, 972; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236. "Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability [or waiver]." *Id*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59. "Doubts are resolved in favor of arbitration" and "[t]he court should order [the parties] to arbitrate unless it is clear that the arbitration clause cannot be interpreted to cover the dispute." *San Francisco Police Officers' Assn. v. San Francisco Police Com.* (2018) 27 Cal.App.5th 676, 683, quoting *California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 204–205. "California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration." *Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663, citing *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890. "(T)he state policy 'favoring' arbitration, like the federal policy, 'is about treating arbitration contracts like all others, not about fostering arbitration.'" *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 580. Therefore, "a court should treat the arbitration agreement as it would any other contract, without applying any special rules based on a policy favoring arbitration. That is, courts should apply the same procedural rules that they would apply to any other contract." *Id.* at 583. The filing of a lawsuit by a plaintiff is sufficient to show that plaintiff has refused to arbitrate claims, allowing a defendant to move for arbitration. *Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th 572, 577.

B. Federal Arbitration Act ("FAA")

Under the Federal Arbitration Act ("FAA"), "(a) written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, … shall be 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. "This saving clause permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration or that derive their meaning

from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339 ("*Concepcion")*, quoting *Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 687.

The FAA supports a general policy favoring arbitration. *Granite Rock Co. v. International Broth. of Teamsters* (2010) 561 U.S. 287, 302. However, this policy only reflects the general deference given to the terms of contracts within courts and does not establish special "arbitration-preferring procedural rules". *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 418; citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24.

Under the Supremacy Clause of the U.S. Constitution, "the FAA preempts contrary state law." *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 932. In cases involving the FAA, state statutes that invalidate arbitration clauses specifically cannot be applied. *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 281. Nor may state courts do what the legislature cannot, and create jurisprudence which discriminates against arbitration specifically. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 341. "What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause." *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 281.

C. Unconscionability Standards

Unconscionability is a defense under California contract law. See Civ. Code, § 1670.5. As applied to arbitration, two elements must be shown, procedural unconscionability and substantive unconscionability. *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243 ("*Baltazar*"). Whether an agreement is unconscionable depends on circumstances at the time it was made. *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655 ("*Abramson*"). Both procedural and substantive unconscionability must be present before a court can refuse to enforce an arbitration provision based on unconscionability. *Baltazar, supra,* 62 Cal.4th at 1243. However, the two elements need not be present in the same degree; courts use a "sliding scale" approach in assessing the two elements. *Id*. at 1243-1244. The more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable. *Id.* at 1244; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal. 4th 83, 114 ("*Armendariz*"); *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 492 ("*Ramirez*")

1. Procedural Unconscionability

"Procedural unconscionability pertains to the making of the agreement; it focuses on the oppression that arises from unequal bargaining power and the surprise to the weaker party that results from hidden terms or the lack of informed choice." *Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 795. The first step in determining procedural unconscionability is an inquiry into whether the contract is one of adhesion. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 ("*OTO*"). "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, supra,* 62 Cal.4th at 1245. "Arbitration contracts imposed as a condition of

employment are typically adhesive." *OTO, supra,* 8 Cal.5th at 126. Once the court determines the contract is one of adhesion, the question becomes whether the circumstances of the contract's formation created such oppression or surprise that the overall fairness must be subject to closer scrutiny. *Id*. "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." *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.

> The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.

Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc. (2015) 232 Cal.App.4th 1332, 1348.

Both pre-employment and continued employment arbitration contracts often represent disproportionate bargaining power for all but the most sought-after employees, as the employer has substantial advantages as a result of economic pressures. *OTO supra,* 8 Cal.5th at 127.

2. Substantive Unconscionability

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246. Mere unequal benefit is insufficient to show substantive unconscionability, rather, the terms must be "so one-sided as to shock the conscience." *24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213. Though many factors go into determining substantive unconscionability, the primary consideration in assessing substantive conscionability is mutuality. *Abramson, supra,* 115 Cal.App.4th at 657. Lack of mutuality, unlimited duration, and broad scope of claims covered are all factors which may be considered substantively unconscionable within an arbitration provision. *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 321-328. Even if the arbitration provision exempts particular claims from both parties from arbitration, if those claims unduly benefit the employer such that

3. Severance

"Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality 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 such severance and restriction are appropriate." *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 124. "Accordingly, 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 contract would be in the interests of justice." *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 517. "(I)n the case of the agreement's lack of mutuality, 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. Rather, the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms." *Armendariz, supra,* 24 Cal.4th at 124–125.

IV. Analysis

Defendant has moved to compel arbitration under the Agreement. Plaintiff opposes Defendant's motion on multiple grounds. Plaintiff posits that the arbitration agreement is both procedurally and substantively unconscionable, and therefore it should not be enforced.

As a preliminary matter, Defendants have shown that an arbitration agreement exists, and that it was Plaintiff that signed it. Therefore, Plaintiff bears the burden of showing that the contract should not be enforced, and Plaintiff thereon relies on arguments that the contract is procedurally and substantively unconscionable.

A. The Court Applies the FAA

Defendants, in moving to compel arbitration, argue that the arbitration agreement is governed by the Federal Arbitration Act (FAA), as the contract sufficiently relates to interstate commerce. For this proposition, Defendants cite to *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 110. Plaintiff offers no substantive argument to the contrary. as the Court has particular concern with the applicability of this cite based on the evidence before it. However, because an arbitration determination appears capable of disposition without this issue, the analysis is controlled by the FAA. Regardless, there is evidence of a signed agreement that the Court may assess.

B. The FAA does not Foreclose Unconscionability

Despite this, general principles of state law contract defenses still apply. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339. Plaintiff argues that the Agreement should be subject to recission because it is nonetheless unconscionable and should not be enforced under state principles of contract law. Defendants opine the contrary. Defendants argue that our high court's decision in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 93, supports arbitration here, as the agreement complies with *Armendariz's* requirements. Defendants' Memorandum in Support, pg. 6:21-7:23. Plaintiff disagrees, making particular arguments regarding the procedural and substantive unconscionability, as is significantly addressed by the *Armendariz* court. *Id*. at 114. Defendant's myopic depiction of what is required of the arbitration provisions is not representative of the unconscionability test as applied by California law to contracts generally. The burden is on Plaintiff's to show why unconscionability is present, and the Court reviews the terms of the Agreement as raised by the arguments of the parties. The Court assesses the unconscionability on a sliding scale, and the stronger the finding on one type, the weaker the other may be. See *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 493. If Plaintiff can show procedural and substantive unconscionability each in

sufficient amounts to justify the defense to enforcement of the contract, he should not be bound to its terms.

C. High Procedural Unconscionability is Present

First, it is plain that this is a contract of adhesion, and therefore there is procedural unconscionability present. This provision is directly included in the merger letter which forms Plaintiff's employment contract after the merger occurred. Employment cases have obvious procedural unconscionability given the economic pressures involved, and as such procedural unconscionability is simply present by the nature of the parties and contract at issue. *OTO supra,* 8 Cal.5th at 127. This appears to apply with particular force under the instant facts. Plaintiff is not a newly hired employee arriving to a fresh employment arrangement. He has been a consistent employee since 1992 and was sent the three-page employment letter in 2015 after over twenty years of service. Plaintiff was around 70 years old at the time. These facts give particular weight to the economic pressures which applied to Plaintiff at the time he received the letter.

Defendants offer two unpersuasive arguments in response. First, Defendants repeatedly argue that there is no evidence that the letter was a condition of employment, and therefore there was no pressure to agree to arbitration. Defendants offer this contention without any evidentiary support, and their bare contention that Plaintiff fails to offer evidence is untrue. First, simply put, Plaintiff's declaration plainly states that he was required to complete the merger employment letter before the first date the merger was effective. See Plaintiff's Declaration, ¶ 4. Defendants fail to show that this is not admissible, material evidence. Furthermore, the Agreement itself shows that Plaintiff's evidence is credible. The Agreement expressly states that Plaintiff had to "(p)lease print, sign and return your acceptance on or before your first official day as a CBRE Employee…". Agreement, pg. 3. Second, Defendants attempt to argue that Plaintiff made no objection to the Arbitration Agreement at the time or since, but that is the very nature of an adhesive contract. The disparity in bargaining power limits the ability of one party to negotiate without substantial risk, resulting in unfairness. Defendants offer no authority counter to this principle.

The letter which formed the Arbitration Agreement, has every indication that it is a form letter with standardized terms, offered on a "take it or leave it basis". *OTO, supra,* 8 Cal.5th at 126. This is sufficient to show that the Agreement is a contract of adhesion, and as such procedural unconscionability is undoubtedly present.

In contrast, there are commonly cited factors which are not against Defendants. The Agreement remained open for 8 days, August 24 to September 1, 2015. This appears to be adequate time for Plaintiff to review the contract. This means the pressures applied to Plaintiff did not extend past those economic pressures associated with a contract with his current employer, on whom he was already reliant for continued employment.

Overall, the Court still finds a high level of procedural unconscionability present in this case. However, without a showing of substantive unconscionability, compelling arbitration would still be proper.

D. Substantive Unconscionability is also Shown

As the Court has already noted, Defendants make extensive argument in reliance on the factors addressed in *Armendariz*, which all relate to substantive unconscionability. However, again, as noted, the factors in *Armendariz* are merely indicative of the broad principles underlying substantive unconscionability. Defendants' arguments in at least one instance are incomplete at best and untrue at worst. Plaintiff does not argue, and the Court does not find, obvious issue in three of the four issues addressed in *Armendariz*. However, there is a notable exception which the Court is accordingly compelled to address.

Defendants argue that the Court should read the Agreement's omission of discovery terms as permissive, citing to *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 105. The actual holding of the high court is deleterious to Defendants' argument. The *Armendariz* court particularly found that the right to discovery, which was "indispensable for the vindication of FEHA claims", was *explicit* in the agreement to arbitrate statutory claims *under the provisions of the CAA*. *Id*. at 105 (the agreement incorporated by reference "all the rules set forth in the CAA"). As the *Armendariz* court noted, the CAA has particular provisions governing discovery which when applied allow for adequate discovery to vindicate those state law claims. The *Armendariz* court found it could not read such incorporation as excluding the necessary discovery. *Ibid*. This bears no similarity to the instant facts. As such, Defendants' contention to this effect is at minimum a substantial misstatement of the *Armendariz* holding.

There is no provision mentioning discovery or the CAA within the Agreement. The Agreement contains reference to the arbitration being conducted "pursuant to the Federal Arbitration Act". Defendants argue that the Agreement here provides for discovery through omission, but the FAA is the only rules stated to apply to the arbitration. The FAA does not provide or even allow for discovery absent "limited 'extraordinary circumstances,'". See *Application of Deiulemar Compagnia Di Navigazione S.p.A. v. M/V Allegra* (4th Cir. 1999) 198 F.3d 473, 479; see also *Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 393. Defendants provide no authority showing that our high court's decision in *Armendariz* is sufficient to allow California to impose its own statutory scheme on cases governed by the FAA. The Court notes that under the FAA, parties remain free to contract regarding the applicable scope of discovery, just as they are under the CAA. The Agreement here is notably *entirely silent*. The type of claim brought here is of the type that Defendants' own provided precedent calls adequate discovery "indispensable" when dealing with FEHA claims. *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 105. Plaintiff has asserted FEHA claims in the Complaint. In assessing the substantive unconscionability, the terms stated in the Agreement clearly restrict discovery by omitting reference thereon, and by imposing procedural rules that limit discovery. As applied to claims brought by employees, and particularly claims under FEHA, application of these procedural rules substantially benefits Defendants, despite their facial neutrality. The Agreement's claim of jurisdiction under the FAA precludes the Court from applying those procedural rules which may allow the Court to "read in" implicit consent to discovery as allowed by the CAA. Defendants may not now add terms to the Arbitration Agreement in order to make it more conscionable. *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 125. ("[W]hether an employer is willing, now that the employment relationship has ended, to allow the arbitration provision to be mutually applicable, or to encompass the full

range of remedies, does not change the fact that the arbitration agreement as written is unconscionable and contrary to public policy. Such a willingness can be seen, at most, as an offer to modify the contract; an offer that was never accepted. No existing rule of contract law permits a party to resuscitate a legally defective contract merely by offering to change it.".) Substantive unconscionability is present.

Defendants state that they will bear the full cost of the arbitration itself. The Agreement provides for a neutral arbitrator. While Defendant opines that the Agreement does not preclude a written award, it no more provides for one than it provides for discovery. However, *Armendariz* states that even such omission is sufficient, so long as the adjudication of FEHA claims in arbitration provides adequate record that should judicial review be required, it has a record to review. *Id*. at 107. There is no apparent restriction on remedies in the Agreement.

Plaintiff argues that the types of claims which are exempt from the arbitration provision unduly benefit Defendants, which means that the arbitration provisions lack mutuality. Distinctions in what claims are arbitrable and what claims are not arbitrable have been consistently found to be substantively unconscionable. Plaintiff accurately points out that the Agreement articulates various types of claims which are overwhelmingly those which would be brought by employees and not Defendants. However, Defendants persuasively respond that while the Agreement articulates various types of claims specifically, it applies to "all claims arising from or related to (Plaintiff's) employment". Accordingly, the types of claims are facially neutral in effect.

The Court is aware of, but does not consider, various other issues raised by more recent jurisprudence related to substantive unconscionability. *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 316.

Given the substantial issue with the availability of discovery, which given the relationship of the parties and the claims at issue, significantly benefit the Defendants in the event of controversy, there is moderate procedural unconscionability.

E. Severance

Defendants argue that any finding of substantive unconscionability can be abrogated through severance of unconscionable terms. First, the Court notes that there is no severability clause incorporated into the agreement, and therefore the Court does not find that the parties have expressed an intent that this be the preferred remedy to unconscionable terms. The Court *may* sever contracts but only should do so liberally where "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 contract would be in the interests of justice." *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 517.

However, the issue here is that the terms listed do not express something severable but rather fail to provide a process which is equitable when considering the relationship of the parties. The instant factual circumstance almost certainly undermines Plaintiff's access to essential procedural protections. "Rather, the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms." *Armendariz v.*

Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83, 125. This is beyond the Court's power. *Ibid*. There is no way to sever terms without substantial windfall to Defendants in rewriting the Agreement to their benefit, in that the agreement will survive scrutiny.

Therefore, based on the moderate showing of substantive unconscionability and the high showing of procedural unconscionability, Plaintiff has displayed a basis for recission of the Agreement. Defendant's motion to compel arbitration is DENIED.

F. Unaddressed but Potential Jurisdictional Issue

The Court's concern is further raised that it may be *incapable* of enforcing the FAA in this instance, as Defendants strongly assert that they are engaged in the movement of "goods and supplies" from outside the state. Richey Declaration, ¶ 3. Plaintiff himself was a "hourly delivery driver". Plaintiff's Declaration ¶ 5.

Under the FAA, "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. "Section 1 exempts from the FAA only contracts of employment of transportation workers." *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119. "§ 1 exempts transportation workers who are engaged in the movement of goods in interstate commerce, even if they do not cross state lines." *Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904, 915 ("*Rittman*"); see also *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274, 282 ("*Nieto*"))("[A] transportation worker does not necessarily have to physically cross state lines in order to engage in the movement of goods in interstate commerce."). Parties may not contract around the exemption in 9 USC § 1. *Rittman, supra*, 971 F.3d at 919.

While the Court need not rely on this issue unaddressed by either party, it does appear to be preclusive to the ability to compel under the FAA, as the motion requests, if the FAA cannot be found to apply to Plaintiff. This appears to be an issue which would require the parties to present evidence thereon, but at this juncture there is sufficient evidence in the record that the Court would be requiring further showing from the parties if it were not denying the motion on the grounds above.

G. Stay

Issuance of the requested stay is mandatory upon granting the motion. CCP § 1281.4; see also *OTO, supra*, 8 Cal.5th at 140. Defendant's motion for a stay of the present proceedings while Plaintiff's individual claims are arbitrated is **DENIED**.

V. Conclusion

The motion to compel arbitration is **DENIED**.

Plaintiff shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

****This is the end of the Tentative Rulings.*****