LAW & MOTION CALENDAR
TENTATIVE RULINGS

April 25, 2024

Judge Melissa R. McCormick
Dept. CX104

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. *See Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

NO.	CASE NAME	MATTER
1	Butler v. E&E Co., Ltd. 2023-01342166	<u>Defendant E&E Co., Ltd.'s Motion to Dismiss or Stay</u> Defendant E&E Co., Ltd. moves to dismiss or stay this action based on inconvenient forum pursuant to Civil Procedure Code section 418.10(a)(2). For the following reasons, defendant's motion is denied.

		Plaintiff filed this action on August 14, 2023. Plaintiff alleges defendant sells sheet sets represented to have a thread count of 1000 under the Beautyrest brand, and that the asserted 1000 thread count is false and misleading. Complaint (ROA 2) ¶¶ 1, 16-20. Plaintiff alleges his claims on his own behalf and that of a putative class comprised of "[a]ll persons in California who purchased the Product during the statutes of limitations for each cause of action alleged." *Id.* ¶ 43. Plaintiff alleges five causes of action: (i) violation of the California Unfair Competition Law; (ii) violation of the California False Advertising Law; (iii) violation of the California Consumer Legal Remedies Act; (iv) breach of express and implied warranties of merchantability and fitness for a particular purpose; and (v) unjust enrichment. *Id.* ¶¶ 53-89. Plaintiff seeks declaratory and injunctive relief, restitution, disgorgement, compensatory damages, punitive damages, interest, and attorneys' fees and costs. *Id.* (Prayer for Relief). On January 4, 2024 different plaintiffs filed a complaint against defendant in the Northern District of California. In the federal case, plaintiffs allege "a putative class action lawsuit on behalf of purchasers of [defendant's] 1000 thread count Beautyrest-brand bedding and linen products . . . and 1500 count Madison Park-brand bedding and linen products." Privette Decl. (ROA 24) Ex. 2 (¶ 1). The federal plaintiffs allege defendant sells "these Products as having higher thread counts than they actually have." *Id.* The federal plaintiffs seek to represent both a nationwide class defined as "[a]ll people in the United States who purchased any Beautyrest product that represents the product as having a thread count of 1000 during the applicable statute of limitations," and a California subclass defined as "[a]ll people in California who purchased any Beautyrest product that represents the product as having a thread count of 1000 during the applicable statute of limitations." *Id.* (¶ 42). The federal plaintiffs allege the same five causes of action plaintiff alleges in this case, in addition to fraud claims and a claim under New York law. *Id.* (¶¶ 51-74 & 82-111). The federal plaintiffs seek compensatory, statutory and punitive damages, declaratory relief, restitution, disgorgement, interest, attorneys' fees, and costs. *Id.* (Prayer for Relief). Civil Procedure Code section 418.10(a)(2) provides that "[a] defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion . . . [t]o stay or dismiss the action on the ground of inconvenient forum." Forum non conveniens is "an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751. "On a motion for forum non conveniens defendant, as the moving party, bears the burden of proof." *Id.* A plaintiff's

		choice of forum will not be disturbed unless the court finds (i) a suitable alternative forum exists, and (ii) the balance of private and public interest factors makes it just that the litigation proceed in the alternative forum. *Id.* There must be a suitable alternative forum available, i.e., one in which a valid judgment may be obtained against the defendant. *Stangvik*, 54 Cal.3d at 752. Plaintiff does not argue a valid judgment could not be obtained against defendant in the Northern District of California, and thus appears to concede the Northern District of California is a suitable alternative forum. If a suitable alternative forum exists, the weight of private and public interest factors must be determined. All of the factors must be weighed in each case. *Shiley Inc. v. Superior Court* (1992) 4 Cal.App.4th 126, 135; *see also Stangvik*, 54 Cal.3d at 753 ("private and public interest factors must be applied flexibly, without giving undue emphasis to any one element"). "The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." *Stangvik*, 54 Cal.3d at 751; *see also Campbell v. Parker-Hannifin Corp.* (1999) 69 Cal.App.4th 1534, 1542 (public interest favored granting motion to stay where trial of action "would contribute to court congestion, as there are 20 separate plaintiffs whose damages would have to be considered"; "California's interest in the case is not sufficient to justify the commitment of judicial time and resources that would be required if the case were tried here"). Defendant has not carried its burden of proof. Defendant concedes that access to discovery from the parties and from nonparties in California should not differ in any material respects in the two lawsuits. Motion (ROA 26) at 10:19-21. Defendant speculates that because defendant's headquarters are in the Northern District of California, "it would likely be less burdensome to proceed in the Northen District" *(id.* at 10:21-22), but presents no specific evidence or argument supporting this speculation. Defendant asserts that "[w]ith respect to any out-of-state discovery, the relative ease of nationwide discovery under the Federal Rules of Civil Procedure would also make proceeding [in the Northern District of California] more efficient than if out-of-state discovery were to be sought in this case." *Id.* at 10:22-24. Defendant does not identify any out-of-state discovery to be sought in either case, or present any evidence supporting this argument. Defendant also did not submit any

		evidence addressing, e.g., the residences of witnesses or the cost of obtaining attendance of witnesses. Instead, defendant asserts that "especially where both cases are at the earliest stages of litigation and it is therefore speculative to try to anticipate all issues that might arise in discovery, the balance of interests tips in favor of the Northern District." *Id.* at 10: 25-27. Defendant's sparse evidence does not support this conclusion, particularly where plaintiff filed this lawsuit five months before the federal plaintiffs filed suit. Turning to the public interest factors, defendant contends "easing this court's congested calendar" favors proceeding in the Northern District of California. This public interest factor primarily applies in circumstances where numerous actions and parties are involved. That is not the case here, as the instant lawsuit is the only lawsuit against defendant on these issues pending in this court. Defendant contends "protecting the interests of Orange County jurors" favors proceeding in the Northern District of California. This public interest factor addresses whether potential jurors would be called upon to decide cases in which the local community has little concern. This factor does not favor proceeding in the Northern District of California, as plaintiff alleges he is a citizen of Orange County, California. Complaint (ROA 2) ¶ 22. The final public interest factor weighs the competing interests of California and the alternative jurisdiction in the litigation. Weighing the competing interests of California and the Northern District of California, the court finds no reason to conclude on this record that the Northern District of California's interests in the litigation outweigh those of the Orange County Superior Court. Plaintiff to give notice. <u>Initial Case Management Conference</u> The court has reviewed the parties' joint initial case management conference statement filed April 18, 2024 (ROA 38), and based thereon continues the April 25, 2024 status conference to <u>September 19, 2024 at 9:00 a.m.</u> in Department CX104. The parties are ordered to file a joint status conference statement at least 5 court days before the hearing. Clerk to give notice.
2	Clark, et al. v. Windsail Capital Group, LLC, et al. 2021-01191735	<u>Plaintiff GrowthPoint Global Inc.'s Motion to Compel Production of Documents</u> Plaintiff GrowthPoint Global Inc. moves to compel defendants Crate Modular Inc. and James Pickell to produce documents in Crate's and/or Pickell's possession. The parties categorize these

		documents as the "Transactional Files" (referring to files from and communications with Jeffer Mangels Butler & Mitchell LLP (JMBM), Susan Morgan, and Joseph Cane), and the "Litigation Files" (referring to files from and communications with Bremer Whyte Brown & O'Meara, LLP (BWBO), SMTD Law LLP, and Barry Kellman). GrowthPoint asserts, and Crate and Pickell do not dispute, that Crate and Pickell possess documents from these law firms and lawyers. Except as discussed below regarding Pickell's privilege log, GrowthPoint's motion is granted. In an August 10, 2023 order (ROA 1633), the court (Judge Peter Wilson) denied Crate's motion for a protective order and to claw back documents from GrowthPoint. Crate argued it was the holder of the privilege of documents from JMBM, Morgan, Cane, BWBO, SMTD and Kellman. *Id.* (at 1-2). The court ruled Crate did not hold the privilege and had no standing to assert the privilege. *Id.* (at 6). With respect to GP Asset Resolution LLC (GPAR), the court ruled that the record before the court was not sufficiently developed to rule on the question of whether and to what extent GrowthPoint had transferred the attorney-client privilege to GPAR pursuant to the ABC. *Id.* (at 4). The court observed that GPAR was not a party to Crate's protective order motion and had not taken a position as to whether it held the privilege. Scott Decl. (ROA 1863) Ex. 1 (at 21-25). The court ruled that the documents the parties had sequestered pending a ruling on Crate's protective order motion would remain sequestered for 14 additional days to enable any party seeking to maintain the sequester to file a motion to do so. *Id.* If no party filed a motion within 14 days, the sequester would end. *Id.* On August 24, 2023 GPAR filed a motion (ROA 1669) asserting it held the privilege and seeking an order clawing back documents from GrowthPoint. Following its settlement with GrowthPoint, GPAR withdrew its motion on November 30, 2023 (ROA 1793, 1803). Accordingly, pursuant to the court's August 10, 2023 order, the sequestration of documents should have ended at that time. GrowthPoint argues it holds the attorney-client privilege regarding the Transactional Files and the Litigation Files, and that it waived the privilege. GrowthPoint asserts that the only other potential privilege holder regarding these documents is GPAR, which also waived the privilege by withdrawing its protective order motion and by agreeing as part of its settlement with GrowthPoint that it "has waived and is no longer asserting any claim that it holds GrowthPoint's attorney-client privilege" and "disclaim[s]" any right to claim the privilege. Scott Decl. (ROA 1863) Ex. 6. GrowthPoint argues that Crate and Pickell thus have no basis on which to withhold the

		Transactional Files and the Litigation Files from production to GrowthPoint. Crate argues GPAR holds the privilege and could not waive it. Pickell argues GrowthPoint lacks standing to waive the privilege or make agreements with GPAR about waiving privilege. These arguments suffer from a fundamental defect: neither Crate nor Pickell has demonstrated it or he has standing to assert privilege as to the Transactional Files or the Litigation Files. Those authorized to claim the attorney-client privilege and prevent disclosure of privileged communications include the holder of the privilege, a person who is authorized to claim the privilege by the holder of the privilege, and the person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure. Evid. Code § 954. Neither Crate nor Pickell has shown that it or he falls within section 954. Indeed, the court already ruled Crate "has no standing to assert the privilege." 8/10/23 Order (ROA 1633, at 6). Accordingly, neither Crate nor Pickell has demonstrated that the attorney-client privilege shields the Transactional Files and the Litigation Files in their possession from production to GrowthPoint. Except as discussed below regarding Pickell, Crate and Pickell are ordered to produce the Transactional Files and the Litigation Files in their possession to GrowthPoint by May 9, 2023. Pickell also argues he "may" hold an "independent" attorney-client privilege in some of the documents identified on his privilege log. Pickell Opp. (ROA 1879) at 5; Scott Decl. (ROA 1863) Ex. 5. GrowthPoint agrees in its reply to defer resolution of this issue to a later date. Reply (ROA 1894) at 14. Pickell is ordered to identify by May 9, 2023 the documents on his privilege log (Scott Decl. (ROA 1863) Ex. 5) as to which he claims an "independent" privilege. Any documents on Pickell's privilege log as to which Pickell does not claim an "independent" privilege shall otherwise be produced in accordance with the above order. Plaintiff GrowthPoint Global Inc. to give notice. <u>Status Conference (Case No. 2021-01191735)</u> The court has reviewed the parties' joint status conference statement filed March 27, 2024 (ROA 1871), and based thereon continues the April 25, 2024 status conference to <u>August 22, 2024 at 9:00 a.m.</u> in Department CX104. The parties are ordered to file a joint status conference statement at least 5 court days before the hearing. Clerk to give notice.

3	Pickell v. GrowthPoint Global, Inc. 2023-01355444	Status Conference (Case No. 2023-01355444) The court has reviewed the parties' joint status conference statement filed April 18, 2024 (ROA 105), and based thereon continues the April 25, 2024 status conference to August 22, 2024 at 9:00 a.m. in Department CX104. The parties are ordered to file a joint status conference statement at least 5 court days before the hearing. Clerk to give notice.
4	Leyva v. HB Healthcare Associates, LLC 2022-01248470	Defendant HB Healthcare Associates, LLC's Motion to Compel Arbitration Defendant HB Healthcare Associates, LLC dba Sea Cliff Healthcare Center moves for an order compelling arbitration of plaintiff Natalie Leyva's individual PAGA claim and staying plaintiff's nonindividual PAGA claim pending the completion of the arbitration. As discussed below, defendant submitted new evidence with its reply; the court granted plaintiff leave to submit a supplemental filing addressing defendant's new evidence. 1/19/24 Order (ROA 89). For the following reasons, defendant's motion is granted. The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract. *Little v. Pullman* (2013) 219 Cal.App.4th 558, 565. The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. *Id.* *The arbitration agreement* Defendant submitted with its moving papers a July 29, 2020 arbitration agreement purporting to bear plaintiff's handwritten signature. Smith Decl. (ROA 63) Ex. 2. In the declaration to which the agreement is attached, Dan Smith, the Executive Director of Sea Cliff Healthcare Center, states that the agreement attached as Exhibit 2 to his declaration is "a true and correct copy of the arbitration agreement" plaintiff signed, "which is dated July 29, 2020." *Id.* ¶ 6. The agreement is entitled "Sea Cliff Healthcare Center Mutual Agreement to Arbitrate Claims." *Id.* Ex. 2 (at 1). Smith attached "other documents signed by [plaintiff] during her employment" as Exhibit 3 to his declaration. *Id.* ¶ 6 & Ex. 3. Exhibit 3 includes one page of an arbitration agreement plaintiff purportedly signed on August 5, 2020, i.e., a page containing the last two paragraphs of an arbitration agreement and plaintiff's signature. *Id.* Ex. 3 (SEA CLIFF 030). In her opposition, plaintiff argued defendant had not proved the existence of a valid arbitration agreement because defendant only attached part of the August 5, 2020 arbitration agreement.

		Defendant submitted with its reply a declaration from its counsel stating that counsel "inadvertently attached an incorrect copy of [plaintiff's] arbitration agreement with [d]efendant to the declaration of Dan Smith." Supp. Flores Decl. (ROA 82) ¶ 2. Counsel's declaration does not identify the exhibit(s) to the Smith Declaration to which this statement pertains or otherwise explain what counsel asserts was "incorrect," nor did Smith submit a supplemental declaration modifying or changing his initial declaration. Defendant also submitted with its reply a declaration from Elizabeth De Sousa, a human resources contractor who provides "back-office support on Human Resources matters" to defendant. De Sousa Decl. (ROA 80) ¶ 1. De Sousa states that in that role, she has access to plaintiff's personnel file. De Sousa Decl. (ROA 80) ¶ 2. De Sousa states that she "accessed and reviewed" plaintiff's personnel file, and that the page attached as Exhibit 1 to De Sousa's declaration is from plaintiff's personnel file. *Id.* De Sousa identifies the page as "the signature page of an Arbitration Agreement signed by [plaintiff] and dated August 5, 2020." *Id.* & Ex. 1. Exhibit 1 to De Sousa's Declaration is the same page attached as part of Exhibit 3 to the Smith Declaration, i.e., a page containing the last two paragraphs of an arbitration agreement and plaintiff's signature. De Sousa states that among the human resources support functions her company provides to defendant is preparing "onboarding documents," which include defendant's "standard Arbitration Agreement, which is revised from time to time." De Sousa Decl. (ROA 80) ¶ 3. De Sousa states she personally "had contact with the staff at Sea Cliff on multiple occasions to ensure that they were using the correct versions of the onboarding documents, including the Arbitration Agreement." *Id.* De Sousa also states she has access to the "various iterations" of the arbitration agreement her company has provided to defendant "over time," and that her company maintains past iterations of the arbitration agreement. *Id.* De Sousa states she has "accessed these files to confirm which version of the Arbitration Agreement matches the signature page signed by [plaintiff] on August 5, 2020." *Id.* She states that attached as Exhibit 2 to her declaration is "a true and correct copy of all three pages of the Arbitration Agreement that is the same version as the signature page signed by [plaintiff] on August 5, 2020." *Id.* & Ex. 2. The document attached as Exhibit 2 to De Sousa's declaration is an unsigned three page "Mutual Agreement to Arbitrate Claims." The top of the first page states: "ENTER FACILITY NAME HERE." The document states it is between "the above-named employer" (defined as the "Company") and "Employee." The agreement does not identify the "above-named employer," the "Company," or the "Employee." Plaintiff states she did not sign the agreement attached as Exhibit 2 to De Sousa's declaration.

		Leyva Decl. (ROA 100) ¶ 3 & Ex. A; Plaintiff's Supp. Brief (ROA 92) at 2:27-28 ("Plaintiff confirms that she does not recall signing the document attached as Exhibit 2 to Ms. De Sousa's declaration."). Even without plaintiff's declaration, the De Sousa declaration does not provide sufficient evidence for the court to conclude defendant carried its burden of demonstrating plaintiff and defendant entered into an arbitration agreement dated August 5, 2020. Plaintiff does not dispute, however, signing the July 29, 2020 arbitration agreement, and plaintiff concedes the July 29, 2020 agreement attached to the Smith Declaration "appears to be a full and complete copy." Plaintiff's Supp. Brief (ROA 92) at 1:22. Plaintiff contends the July 29, 2020 agreement does not bind her because (i) the August 5, 2020 agreement supersedes it, and (ii) defendant's counsel's statement in her supplemental declaration that she attached an incorrect copy of plaintiff's arbitration agreement to the Smith Declaration constitutes a concession by defendant that the July 29, 2020 arbitration agreement "is not valid." The former contention is inconsistent with plaintiff's statement she did not sign the August 5, 2020 agreement. The latter contention fails because, as discussed above, defendant's counsel does not identify the exhibit(s) to the Smith Declaration to which her statement pertains or otherwise explain what counsel asserts was "incorrect," and Smith did not submit a supplemental declaration modifying or correcting anything his initial declaration. In addition, plaintiff cites no authority holding that an attorney's error in assembling a court filing renders a contract invalid. Defendant carried its burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, i.e., the July 29, 2020 arbitration agreement. *The Federal Arbitration Act applies* Defendant argues the FAA applies. Section 2 of the Federal Arbitration Act (FAA), 9 U.S.C. § 2, applies to any "written provision in . . . a contract evidencing a transaction involving commerce." The arbitration agreement provides that it is "enforceable under and governed by the Federal Arbitration Act . . . , but if the FAA is held not to apply to this Agreement for any reason, this mutual agreement to arbitrate claims shall be enforced under the laws of the state in which Employee was last employed for the Company." Smith Decl. (ROA 63) Ex. 2 (at 2). In addition, defendant has presented evidence that it engages in interstate commerce. Smith Decl. (ROA 63) ¶¶ 1, 8. Plaintiff does not dispute the FAA applies, and has not objected to—or addressed—defendant's evidence of interstate commerce. Accordingly, the court finds the FAA applies. *The arbitration agreement is not unconscionable*

		Plaintiff argues the arbitration agreement is unconscionable. In *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, the California Supreme Court recognized that notwithstanding the strong public policy favoring arbitration, "'"generally applicable contract defenses, such as . . . unconscionability, may be applied to invalidate arbitration agreements without contravening" the FAA' or California law." *Id.* at 125; *see AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339. "Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. [Citation.] 'The term [contract of adhesion] signifies a standardized contract, 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.] If the contract is adhesive, the court must then determine whether 'other factors are present which, under established legal rules—legislative or judicial—operate to render it [unenforceable].'" *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 113. To declare an agreement unenforceable, a court must find both procedural and substantive unconscionability. Procedural unconscionability focuses on oppression or surprise due to unequal bargaining power; substantive unconscionability looks at overly harsh or one-sided results. *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243; *see also OTO*, 8 Cal.5th at 129-30. "[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." *Armendariz,* 24 Cal.4th at 114. Plaintiff bears the burden to demonstrate that the arbitration agreement is procedurally and substantively unconscionable. *Sanchez v. Carmax Auto Superstores California, LLC* (2014) 224 Cal.App.4th 398, 402. The arbitration agreement is a contract of adhesion. It is a form agreement provided to defendant's employees as part of the onboarding process. Smith Decl. (ROA 63) ¶ 5; De Sousa Decl. (ROA 80) ¶ 3. The adhesive nature of the agreement is evidence of some degree of procedural unconscionability. *Sanchez*, 224 Cal.App.4th at 403. Plaintiff argues the agreement is procedurally unconscionable because the agreement states that any arbitration under the agreement will be conducted before a single arbitrator of the American Arbitration Association, but it does not state the AAA rules apply and, in any event, the AAA rules were not included with the agreement. "The law requires more than the simple failure to provide the employee with a copy of the rules." *Cisneros Alvarez v. Altamed Health Services Corp*. (2021) 60 Cal.App.5th 572, 590. "[T]he failure to provide a copy of the arbitration rules generally raises procedural unconscionability

		concerns only if there is a substantively unconscionable provision in the omitted rules." *Id.* Defendant's failure to provide plaintiff with a copy of the AAA rules does not by itself render the agreement procedurally unconscionable, and plaintiff does not contend the AAA rules contain substantively unconscionable provisions. This argument does not support a finding of procedural unconscionability. Plaintiff also argues the arbitration agreement is procedurally unconscionable because nobody explained the significance of the arbitration agreement to her. The first paragraph of the agreement states in bold type: "**In agreeing to arbitration, both the Company and Employee explicitly waive their respective rights to trial by jury.**" Smith Decl. (ROA 63) Ex. 2 (at 1) (bold in original). In addition, plaintiff provides no evidence she had questions about the July 29, 2020 agreement, or asked for more time to review it. This argument does not support a finding of procedural unconscionability. *See Chin v. Advanced Fresh Concepts Franchise Corp.* (2011) 194 Cal.App.4th 704, 708 ("Since unconscionability is a contract defense, the party opposing arbitration bears the burden of proving that an arbitration provision is unenforceable on that ground."). As noted above, substantive unconscionability examines the fairness of a contract's terms to ensure that a contract of adhesion does not impose terms that are overly harsh, unduly oppressive, or unfairly one-sided. *OTO*, 8 Cal.5th at 129-30. The court focuses on terms that unreasonably favor the more powerful party, impair the integrity of the bargaining process, contravene public interest or policy, or attempt to impermissibly alter fundamental legal duties. This includes unreasonable or harsh terms or ones that undermine the nondrafting party's reasonable expectations. *Id*. at 130. Plaintiff argues the arbitration agreement is substantively unconscionable because it does not specify how the AAA arbitrator will be selected or state any requirements "as to the qualifications of the arbitrator." As noted, the agreement states that any arbitration under the agreement will be conducted before a single AAA arbitrator. Plaintiff cites no authority holding that an arbitration agreement must specify the method of selection or the arbitrator's qualifications. Plaintiff argues the arbitration agreement is substantively unconscionable because it does not grant plaintiff any discovery. The arbitration agreement provides: "The Arbitrator shall have the authority to order such discovery by way of deposition, interrogatory, document production, or otherwise, as the Arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration." Plaintiff cites no authority holding this term does

		not provide for adequate discovery. *Cf. Lane v. Francis Capital Mngt. LLC* (2014) 224 Cal.App.4th 676, 692-93. Plaintiff also argues the arbitration agreement is substantively unconscionable because it states that "[t]he arbitration shall take place in a venue that it is located within a reasonable distance from the Company." Plaintiff argues this provision is "unduly oppressive because it invalidly limits Plaintiff's forum options." Plaintiff provides no legal or evidentiary support for this argument. In addition, plaintiff alleges in her complaint that she resides in Orange County, California and that defendant's headquarters are in Orange County, California. Complaint (ROA 2) ¶¶ 4, 5. *The arbitration agreement applies to plaintiff's individual PAGA claim* Plaintiff argues that before the United States Supreme Court decided *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, PAGA claims could not be divided into individual claims and nonindividual claims, i.e., any PAGA claim was always a "representative" claim. Plaintiff asserts that because she signed the arbitration agreement before *Viking River* was decided, her individual PAGA claim is exempt from arbitration. Plaintiff also argues the arbitration agreement does not differentiate between individual and nonindividual claims. Contrary to plaintiff's claim, the arbitration agreement distinguishes between individual and representative claims. As an initial matter, the agreement requires arbitration of a broad range of claims between plaintiff and defendant. The agreement states: "The above-named employer, (the 'Company') and Employee hereby agree to resolve by final and binding arbitration any and all claims or controversies for which a court or other governmental dispute resolution forum otherwise would be authorized by law to grant relief, in any way arising out of, relating to or associated with Employee's employment with the Company or any of its parents, affiliates, or subsidiaries, or the termination of such employment. . . . "The claims covered by this Agreement include, but are not limited to, claims for breach of any contract or covenant, express or implied; claims for breach of any fiduciary duty or other duty owed to Employee by Company or to Company by Employee; tort claims; claims for wages or other compensation due; claims for discrimination or harassment, including but not limited to discrimination or harassment based on race, sex, pregnancy, religion, national origin, ancestry, age, marital status, physical disability, mental disability, medical condition, gender identity, or sexual orientation; and claims for violation of any federal, state or other governmental constitution, statue, ordinance or regulation (as originally enacted and as amended), including but not limited to breach of contract, breach of the

		covenant of good faith and fair dealing, wrongful termination in violation of public policy, infliction of emotional distress, misrepresentation, invasion of privacy, malicious prosecution, claims under Title VII of the Civil Rights Act of 1964 ('Title VII'), the Age Discrimination in Employment Act ('ADEA'), the Americans with Disabilities Act ('ADA'), the Fair Labor Standards Act ('FLSA'), the Employee Retirement Income Security Act ('ERISA'), the Consolidated Omnibus Budget Reconciliation Act ('COBRA'), the Family and Medical Leave Act ('FMLA'), the Unruh Act, the California Fair Employment and Housing Act ('FEHA'), the California Family Rights Act ('CFRA'), the California Labor Code, the California Code of Civil Procedure, the California Civil Code, the California Wage Orders, and any other statutory or common law claims relating to employment, the recruitment or application therefor and the departure therefrom (collectively, 'Arbitrable Disputes')." Smith Decl. (ROA 62) Ex. 2 (at 1). The agreement does not apply to a "representative claim" under PAGA. The agreement states: "Notwithstanding the foregoing, nothing contained in this Agreement shall preclude Employee from pursuing, filing, participating in or being represented in a representative claim brought under the state Private Attorneys General Act of 2004." The agreement differentiates "representative" claims from "individual" claims: "Both the Company and Employee waive any right either may otherwise have to pursue, file, participate in, or be represented in any Arbitrable Dispute brought in any court on a class basis, or as a collection [*sic*] action, or as a representative action. Notwithstanding the foregoing, nothing contained in this Agreement shall preclude Employee from pursuing, filing, participating in or being represented in a representative claim brought under the state Private Attorneys General Act of 2004. All Arbitrable Disputes subject to this Agreement must be arbitrated as individual claims." Based on the above provisions, the court concludes the parties intended the arbitration agreement to require arbitration of an employee's individual claims, and to exclude from arbitration, as relevant here, nonindividual PAGA claims. Because the agreement differentiates "representative" claims from "individual" claims, *Duran v. EmployBridge Holding Company* (2023) 92 Cal.App.5th 59, on which plaintiff relies, does not apply here. By its terms, the agreement here requires arbitration of individual claims. *Plaintiff's nonindividual PAGA claims are stayed*

		Defendant argues plaintiff's nonindividual PAGA claim should be stayed pending completion of the arbitration of plaintiff's individual PAGA claim. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 does not require a stay of nonindividual PAGA claims pending arbitration of individual PAGA claims. The court has discretion, however, to stay a court action when an issue involved in the case is ordered to arbitration. *Adolph*, 14 Cal.5th at 1123-24. The court elects to exercise its discretion to stay the court action pending completion of the arbitration. That procedure avoids the possibility of, e.g., inconsistent determinations of whether plaintiff does or does not have standing under PAGA, i.e., whether plaintiff did or did not suffer a Labor Code violation during employment. *Gavriiloglou v. Prime Healthcare Mngt.* (2022) 83 Cal.App.5th 595, on which plaintiff relies, has been criticized. *See Rocha v. U-Haul Co. of Cal.* (2023) 88 Cal.App.5th 65, 80-81. Plaintiff's evidentiary objections (ROA 74) and supplemental evidentiary objections (ROA 94) are overruled. The superior court action is stayed pending completion of the arbitration. An ADR Review hearing is scheduled for <u>October 31, 2024 at 9:00 a.m.</u> in Department CX104. The parties are ordered to file a joint status conference report at least five court days before the hearing. Defendant to give notice. <u>Status Conference</u> The court has reviewed the parties' joint status conference statement filed April 18, 2024 (ROA 102). In light of the court's concurrent ruling on defendant HB Healthcare Associates, LLC's motion to compel arbitration, the status conference scheduled for April 25, 2024 at 2:00 p.m. in Department CX104 is vacated. Clerk to give notice.
5	Lozano v. Golden Universe Investment Inc., et al. 2020-01175299	<u>Plaintiff Rafael Lopez's Motion for Terminating Sanctions</u> Plaintiff Rafael Lopez moves for an order striking defendants Golden Universe Investment, Inc. and Keshen Cai's answers and entering their defaults as a terminating sanction for defendants' failure to comply with the court's December 21, 2023 order (ROA 247) directing defendants to provide responses to plaintiff's form interrogatories and to pay sanctions, and directing Cai to provide responses to plaintiff's special interrogatories and requests for production and to pay sanctions. Plaintiff's motion is denied for the following reasons. Disobeying a court order to provide discovery is a misuse of the discovery process. Cal. Civ. Proc. Code § 2023.010(g); *Van*

		Sickle v. Gilbert (2011) 196 Cal.App.4th 1495, 1516. A trial court should consider both the conduct being sanctioned and its effect on the party seeking discovery and, in choosing a sanction, should attempt to tailor the sanction to the harm caused by the withheld discovery. *Doppes v. Bentley Motors, Inc*. (2009) 174 Cal.App.4th 967, 992. The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. *Id.* If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse. *Id.* Where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, a trial court is justified in imposing the ultimate sanction. *Id.* Because terminating sanctions are drastic, it is generally recognized that "terminating sanctions are to be used sparingly, only when the trial court concludes that lesser sanctions would not bring about the compliance of the offending party." *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496. Courts contemplating imposition of a terminating sanction should generally engage in a "balancing process," *McGinty v. Superior Ct.* (1994) 26 Cal.App.4th 204, 214, taking into account the nature of the discovery abuse, whether it was part of a pattern, whether it was willful and without substantial justification, *Sauer v. Superior Ct.* (1987) 195 Cal.App.3d 213, 224-25, whether lesser sanctions would be effective to produce the discovery sought, the extent of the prejudice to other party, and whether the sanction would result in a "windfall" to the other party. *McGinty*, 26 Cal.App.4th at 214. In most cases upholding a terminating sanction, there was substantial evidence of the party's repeated and willful violations of its discovery obligations and a demonstrated intent not to comply. *See, e.g.*, *R.S. Creative*, 75 Cal.App.4th at 496; *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1247; *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279, overruled on other grounds in *Mileikowsky v. West Hills Hosp. & Med. Ctr.* (2009) 45 Cal.4th 1259. In each of these cases, the common element was the party's continuous obstructive and willful conduct in the discovery process. The court does not find that the record here supports a terminating sanction. Plaintiff's motion does not set forth substantial evidence of defendants' continuous obstructive and willful conduct in the discovery process warranting the ultimate sanction. Plaintiff's request for monetary sanctions to reimburse plaintiff for filing the instant motion is denied, as plaintiff did not prevail on the motion.

		The pretrial conference remains scheduled for June 21, 2024 at 9:00 a.m. in Department CX104. The trial remains scheduled for July 22, 2024 at 9:00 a.m. in Department CX104. Plaintiff to give notice.
6	Martinez v. EM Tortillas, LLC 2022-01263512	<u>Plaintiff's Motion for Approval of PAGA Settlement</u> The court has reviewed and considered the papers, including the supplemental papers, filed in support of plaintiff's unopposed motion for approval of a $225,000 PAGA settlement. The court has the following questions and comments: 1. In its January 11, 2024 order (ROA 62), the court asked whether the "Plaintiff's General Release Payment" (Settlement Agreement ¶ 18) is in addition to the "enhancement payment" sought in the motion for approval, as the "Plaintiff's General Release Payment" appears to be a payment to settle plaintiff's individual claims in exchange for plaintiff's release. *See id.* Plaintiff's counsel states that "Plaintiff's General Release Payment is the same as the enhancement payment sought in the Motion. The Parties are requesting that Plaintiff be paid $10,000 for a full general release of her claims (which is far broader than any other PAGA Member) and for her efforts working on the litigation." Supp. Gaines Decl. (ROA 71) ¶ 4. Plaintiff should cite legal authority standing for the proposition that an enhancement payment is appropriately awarded as compensation for a release. 2. In its January 11, 2024 order (ROA 62), the court asked whether the parties intend for the PAGA Members to be able to dispute the number of pay periods. Plaintiff's counsel states the parties do not intend for PAGA Members to be able to dispute the number of pay periods. Supp. Gaines Decl. (ROA 71) ¶ 4. How do the parties propose to resolve any discrepancies between defendant's records and the PAGA Members' records? 3. In its January 11, 2024 order (ROA 62), the court noted that the settlement administrator's declaration (Lawrence Declaration, ROA 50) states the settlement administrator's fees will not exceed $2,500 (*id.* ¶ 17 & Ex. B), but plaintiff's motion states the settlement administrator's fees will not exceed $4,000. Plaintiff has submitted a revised invoice from the settlement administrator reflecting increased fees of $2,750 in light of the Spanish-language translation. Supp. Gaines Decl. (ROA 71) ¶ 7 & Ex. E. Plaintiff continues to seek $4,000 in settlement administration fees because "in [plaintiff's counsel's] experience, during the disbursement and data gathering processes, situations arise that may require a settlement administrator to increase its fees (for

		example, if an escalator provision is invoked, and there are additional aggrieved employees, the administrator may need to increase its fees)." Supp. Gaines Decl. (ROA 71) ¶ 7. This explanation is speculative and does not support an award of settlement administration fees that exceeds the settlement administrator's $2,750 estimate. The hearing on plaintiff's motion for approval is continued to August 29, 2024 at 2:00 p.m. in Department CX104 to permit the parties to address and respond to the above issues. *See also* Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement shall be submitted, rather than an "amended settlement agreement," to streamline the court's review of the documents. The parties shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order). Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended settlement documents, and file a proof of service.
7	Orozco v. Anaheim Arena Management, LLC, et al. 2023-01352251	Defendants Anaheim Ducks Hockey Club, LLC and Anaheim Arena Management, LLC's Motion to Compel Arbitration Defendants Anaheim Ducks Hockey Club, LLC and Anaheim Arena Management, LLC move to compel arbitration of plaintiff Claudia Orozco's individual PAGA claim, to stay plaintiff's nonindividual PAGA claim, and to strike plaintiff's class allegations. For the following reasons, defendants' motion is granted. The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract. *Little v. Pullman* (2013) 219 Cal.App.4th 558, 565. The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. *Id.* *Defendants have carried their burden of proving the existence of valid arbitration agreement* The court resolves the parties' dispute regarding the existence of the arbitration agreement using a three-step burden-shifting process. *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1056. "The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. (Cal. Rules of Court, rule 3.1330; *Condee*

		v. Longwood Management Corp. (2001) 88 Cal.App.4th 215, 219, 105 Cal.Rptr.2d 597.) A movant can bear this initial burden 'by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature.' (*Espejo, supra*, 246 Cal.App.4th at p. 1060, 201 Cal.Rptr.3d 318.) At this step, a movant need not 'follow the normal procedures of document authentication' and need only 'allege the existence of an agreement and support the allegation as provided in rule [3.1330].' (*Condee*, *supra*, at pp. 218–219, 105 Cal.Rptr.2d 597.) [¶] If the movant bears its initial burden, the burden shifts to the party opposing arbitration to identify a factual dispute as to the agreement's existence—in this instance, by disputing the authenticity of their signatures. To bear this burden, the arbitration opponent must offer admissible evidence creating a factual dispute as to the authenticity of their signatures. The opponent need not *prove* that his or her purported signature is not authentic, but must submit sufficient evidence to create a factual dispute and shift the burden back to the arbitration proponent, who retains the ultimate burden of proving, by a preponderance of the evidence, the authenticity of the signature. (*Espejo*, *supra*, 246 Cal.App.4th at p. 1060, 201 Cal.Rptr.3d 318.)" *Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755 (emphasis in original). Defendants submitted a copy of the arbitration agreement bearing plaintiff's apparent handwritten signature. Romero Decl. (ROA 51) Ex. 1. In response, plaintiff did not declare that she had *not* signed the agreement, or that her physical signature was forged or inauthentic. To the contrary, plaintiff concedes she signed the arbitration agreement. Orozco Decl. (ROA 64) ¶¶ 3, 5. Plaintiff states she does not recall seeing the arbitration agreement, and that had she known she was signing an arbitration agreement, she would not have signed it. *Id.* ¶¶ 4, 6. This evidence does not create a factual dispute as to whether plaintiff signed the agreement. The declaration acknowledges that plaintiff signed the arbitration agreement. Although plaintiff states she does not recall seeing the agreement, there is no conflict between plaintiff having signed a document on which her handwritten signature appears and, five years later, being unable to recall the document. In the absence of any evidence that plaintiff's purported signature was not her own, there is no evidence plaintiff did not in fact sign the agreement. "[A]n individual is capable of recognizing his or her own personal signature. If the individual does not deny that the handwritten personal signature is his or her own, that person's failure to remember signing is of little or no significance." *Iyere*, 87 Cal.App.5th at 757. As explained in *Iyere*, "[i]f a party confronted with his or her handwritten signature on an arbitration agreement is unable to allege that the signature is inauthentic or forged, the fact that that person does not recall signing the agreement neither creates a factual dispute as to

		the signature's authenticity nor affords an independent basis to find that a contract was not formed." *Id.* at 758. *The Federal Arbitration Act applies* Defendants argue the Federal Arbitration Act (FAA) applies. Section 2 of the FAA, 9 U.S.C. § 2, applies to any "written provision in . . . a contract evidencing a transaction involving commerce." The arbitration agreement states: "The parties agree that this Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. The parties also understand and agree that the Company is engaged in transactions involving interstate commerce." Romero Decl. (ROA 51) Ex. 1 (at 1-2). Defendants have also presented evidence defendant Anaheim Ducks Hockey Club engages in interstate commerce. Romero Decl. (ROA 51) ¶ 3 ("ADHC contracts for goods and services with over 392 different vendors in states outside of California, including Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, North Dakota, Nebraska, New Jersey, Nevada, New York, Ohio, Oklahoma, Oregon, Rhode Island, Pennsylvania, South Carolina, Texas, Tennessee, Utah, Virginia, Washington, and Wisconsin. ADHC also markets and advertises outside of California for events at the Honda Center (a large entertainment venue). Furthermore, attendees from outside of California come to events hosted by ADHC at the Honda Center."). Plaintiff states in her declaration that her job duties did not involve crossing state lines or interstate commerce Orozco Decl. (ROA 64) ¶ 9. Plaintiff states in her opposition that defendants hired her in 2018 as an Administrative Services Concierge at the Honda Center, but plaintiff does not describe her job or her job duties in her declaration. Plaintiff also does not argue the FAA does not apply, does not address application of the FAA, and does not assert, much less provide reasons, that her conclusory statement overcomes the express term in the arbitration agreement and defendants' evidence. The court finds the FAA applies. *Unconscionability* Plaintiff does not dispute defendants' contentions (i) the arbitration agreement encompasses plaintiff's claims and (ii) the arbitration agreement applies to plaintiff's claims against both defendants. Plaintiff argues the arbitration agreement is unconscionable. In *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, the California Supreme Court recognized that notwithstanding the strong public policy favoring arbitration, ""generally applicable contract defenses, such as . . . unconscionability, may be applied to invalidate arbitration agreements without contravening"

		the FAA' or California law." *Id.* at 125; *see AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339. "Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. [Citation.] 'The term [contract of adhesion] signifies a standardized contract, 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.] If the contract is adhesive, the court must then determine whether 'other factors are present which, under established legal rules—legislative or judicial—operate to render it [unenforceable].'" *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 113. To declare an agreement unenforceable, a court must find both procedural and substantive unconscionability. Procedural unconscionability focuses on oppression or surprise due to unequal bargaining power; substantive unconscionability looks at overly harsh or one-sided results. *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243; *see also OTO*, 8 Cal.5th at 129-30. "[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." *Armendariz,* 24 Cal.4th at 114. Plaintiff bears the burden to demonstrate that the arbitration agreement is procedurally and substantively unconscionable. *Sanchez v. Carmax Auto Superstores California, LLC* (2014) 224 Cal.App.4th 398, 402. The arbitration agreement is a contract of adhesion. The arbitration agreement is a preprinted form agreement and states the parties enter into the agreement "[i]n consideration of the at-will employment relationship" between plaintiff and defendant Anaheim Ducks Hockey Club. Romero Decl. (ROA 51) Ex. 1 (at 1). The adhesive nature of the agreement is evidence of some degree of procedural unconscionability. *Sanchez*, 224 Cal.App.4th at 403. Plaintiff argues the agreement is procedurally unconscionable because the JAMS Employment Arbitration Rules & Procedures, which the agreement states will apply to arbitrations conducted pursuant to the agreement, were not included with the agreement. The agreement states that an employee "may obtain a copy of the JAMS Rules by requesting a copy from Human Resources or by accessing the JAMS website at www.jamsadr.com." Romero Decl. (ROA 51) Ex. 1 (at 1). The agreement further states that "[b]y signing this Agreement, Employee acknowledges that Employee has had an opportunity to review the JAMS Rules before signing this Agreement." *Id.* Plaintiff states in her declaration that she did not receive a copy of the rules. Orozco Decl. (ROA 64) ¶ 8.

		"The law requires more than the simple failure to provide the employee with a copy of the rules." *Cisneros Alvarez v. Altamed Health Services Corp*. (2021) 60 Cal.App.5th 572, 590. "[T]he failure to provide a copy of the arbitration rules generally raises procedural unconscionability concerns only if there is a substantively unconscionable provision in the omitted rules." *Id.* Defendants' failure to provide plaintiff with a copy of the JAMS rules does not by itself render the agreement procedurally unconscionable, and plaintiff does not contend the JAMS rules contain substantively unconscionable provisions. This argument does not support a finding of procedural unconscionability. Plaintiff also asserts in her opposition that defendants did not provide her with a copy of the arbitration agreement itself. Opp. (ROA 69) at 3:19. Neither the cited portion of plaintiff's declaration nor any other part of plaintiff's declaration supports this assertion. As noted above, substantive unconscionability examines the fairness of a contract's terms to ensure that a contract of adhesion does not impose terms that are overly harsh, unduly oppressive, or unfairly one-sided. *OTO*, 8 Cal.5th at 129-30. The court focuses on terms that unreasonably favor the more powerful party, impair the integrity of the bargaining process, contravene public interest or policy, or attempt to impermissibly alter fundamental legal duties. This includes unreasonable or harsh terms or ones that undermine the nondrafting party's reasonable expectations. *Id*. at 130. Plaintiffs argues the agreement is substantively unconscionable because it does not provide for judicial review of an arbitration decision. The agreement states the contrary: "The arbitrator's decision is final and binding which means there will be no trial by a judge or jury, or ability to appeal the arbitrator's decision *except as provided by law*." Romero Decl. (ROA 51) Ex. 1 (at 1) (italics added). In other words, the agreement provides that an appeal of the arbitrator's decision will be allowed if permitted by law. Moreover, the agreement provides that the arbitrator's decision "shall be in writing and shall provide the reasons for the award unless the parties agree otherwise." Romero Decl. (ROA 51) Ex. 1 (at 2). *See Armendariz*, 24 Cal.4th at 106-07. This argument does not support a finding of substantive unconscionability. *The class action waiver is enforceable* The arbitration agreement contains a class action waiver. Romero Decl. (ROA 51) Ex. 1 (at 2). As discussed above, the FAA applies. The class action waiver is therefore enforceable, which plaintiff does not dispute. *See, e.g.*, *Viking River Cruises v. Moriana* (2022) 142 S.Ct. 1906, 1918 ("'a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the

		party *agreed* to do so'") (italics in original); *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 352 (holding class action waivers are enforceable under FAA and California rule to contrary preempted); *Evenskaas v. California Transit, Inc.* (2022) 81 Cal.App.5th 285, 297-98. Plaintiff's class claims are dismissed without prejudice. *Plaintiff's nonindividual PAGA claims are stayed* Defendants argue plaintiff's nonindividual PAGA claims should be stayed pending completion of the arbitration of plaintiff's individual PAGA claims. The arbitration agreement provides that "any representative claims that are found not subject to arbitration under this agreement shall be resolved in court and are stayed pending the outcome of the arbitration." Romero Decl. (ROA 51) Ex. 1 (at 3). *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 does not require a stay of nonindividual PAGA claims pending arbitration of individual PAGA claims. The court has discretion, however, to stay a court action when an issue involved in the case is ordered to arbitration. *Adolph*, 14 Cal.5th at 1123-24. The court elects to exercise its discretion to stay the court action pending completion of the arbitration. That procedure avoids the possibility of, e.g., inconsistent determinations of whether plaintiff does or does not have standing under PAGA, i.e., whether plaintiff did or did not suffer a Labor Code violation during employment. Plaintiff's Evidentiary Objections (ROA 65) are overruled. Plaintiff's Request for Judicial Notice (ROA 62) of a superior court order declining to stay nonindividual PAGA claims and defendants' Request for Judicial Notice (ROA 49) of three superior court orders granting motions to compel arbitration are denied. The parties appear to present these documents not as judicially-noticeable court records, but rather as purportedly persuasive legal authority. *See* Motion (ROA 58) at 20:14-17; Opp. (ROA 69) at 2:18-22. The superior court action is stayed pending completion of the arbitration. The initial case management conference scheduled for April 25, 2024 is vacated. An ADR Review hearing is scheduled for <u>October 31, 2024 at 9:00 a.m.</u> in Department CX104. The parties are ordered to file a joint status conference report at least five court days before the hearing. Defendants to give notice. <u>Initial Case Management Conference</u> In light of the court's concurrent ruling on defendants Anaheim Ducks Hockey Club, LLC and Anaheim Arena Management, LLC's motion to compel arbitration, the initial case management

		conference scheduled for April 25, 2024 at 2:00 p.m. in Department CX104 is vacated. Clerk to give notice.
8	Perez v. Velvet Yogurt, Inc., et al. 2021-01221399	<u>Plaintiff Mayte Perez's Motion for Final Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers filed in support of plaintiff's motion for final approval of an $114,692.96 class action and PAGA settlement. The court has the following questions and comments: 1. Were the November 30, 2023 order (ROA 116) and the December 12, 2023 order granting preliminary approval (ROA 127) served on the LWDA? Plaintiff must file a proof of service with the court reflecting service of these orders on the LWDA. 2. Were any exclusions, objections or disputes received for the 31 remailed notices? 3. The settlement administrator states plaintiff's individual settlement share is $517.55. Is plaintiff anticipating any other compensation (not including any enhancement payment) from the settlement (such as for any individual claims)? 4. The settlement administrator should submit copies of the exclusion requests. 5. All counsel must state whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action in any other court that asserts claims similar to those asserted in this action. Counsel's statement that "plaintiff and her counsel are unaware of any related action" is insufficient. Garay Decl. (ROA 139) ¶ 28. If any such actions are known to exist, the declaration(s) shall also state the name and case number of any such case and the procedural status of the case, and describe the impact of the settlement on that case. 6. Plaintiff's counsel seeks reimbursement for "cumulative print, copy mileage and postage fees" and for "document purchase fees." Counsel should provide legal authority demonstrating that each of these costs may be awarded. Plaintiff should also provide invoices substantiating and explaining the two mediation fees and the expert fee. The court will not award sums for costs not incurred, i.e., for "Anticipated Future Filing/Service Fees." 7. As to the proposed order and judgment (ROA 129): a. Counsel's information should be removed from the caption page;

		b. The hearing date and time should be removed from the caption page; c. The first paragraph on page 1 should end on line 3 after "Department CX-104"; d. Paragraph 1 should state that no disputes were received and that four requests for exclusion were received and the excluded individuals should be identified; e. The last sentence of paragraph 4 should be removed; f. In paragraph 8, the phrase "and in the best interests of the class members" should be inserted in the first sentence after "adequate," and the sentence should end after "class members." The second sentence should be revised to state: "The court orders the parties and the settlement administrator to effectuate the Settlement according to its terms." The remainder of paragraph 8 should be removed; g. The last sentence of paragraph 12 should be removed; h. Paragraph 14 appears inconsistent with the fee-splitting arrangement described in counsel's declarations and should be revised (*see* Hyun Decl. (ROA 131) ¶ 20; Garay Decl. (ROA 139) ¶ 37); i. The phrase "Without affecting the finality of this order or the entry of judgment in any way, and" should be removed from paragraph 15; j. The parties should propose a date for the final accounting hearing. Should the motion for final approval be granted, the court will hold a final accounting hearing on a Thursday at 9:00 a.m. Plaintiff shall submit a final accounting report at least 9 court days before the final accounting hearing regarding the status of the settlement administration. The final report must include all information necessary for the court to determine the total amount actually paid to class members and any amounts tendered to the State Controller's Office under the unclaimed property law; and k. Paragraph 17 should be revised to state: "The court hereby enters final judgment in accordance with the terms of the Settlement, the December 12, 2023 Order Granting Preliminary Approval of Class Action and PAGA Settlement, and this Order. Notice of entry of the judgment shall be provided to Participating Class Members by mailing a copy of this

		Order and Judgment to each Participating Class Member with the settlement payment(s)." The hearing on plaintiff's motion for final approval is continued to <u>September 12, 2024 at 2:00 p.m.</u> in Department CX104 to enable the parties to address and respond to the above issues. *See also* Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental documents, and file a proof of service.
9	Premier Liberty Development, LLC v. Nguyen 2018-01008782	Off calendar.
10	Surby v. ARB, Inc. 2021-01194784	Off calendar.
11	Velasquez, et al. v. Team Blaze, et al. 2021-01187932	<u>Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement</u> The court has considered the papers, including the supplemental papers, filed in support of plaintiffs' motion for preliminary approval of a class action and PAGA settlement. The court has the following questions and comments: <u>As to the settlement</u>: 1. Neither the settlement agreement nor the addendum to the settlement agreement (Proposed Order (ROA 116) Ex. A) is signed by all parties. 2. The definition of "Released Claims" in paragraph 3 of in the addendum to the settlement Agreement (Proposed Order (ROA 116) Ex. A) contains duplicative language, i.e., "any and all claims, damages, or causes of action alleged in, or arising out of, the allegations in the Complaint filed in the Action and the PAGA Notice, which were alleged or which reasonably could have been alleged by reason of or in connection with any fact set forth or referred to in Plaintiffs' operative complaint and/or the PAGA Notice based on any of the factual allegations contained in such complaints and/or the PAGA Notice, including, but not limited to . . . ." 3. As noted in the court's January 11, 2024 order (ROA 113, ¶ 20), *all* parties should advise the court whether, after reasonable inquiry, they are aware of any related

		pending actions or other cases that may be impacted by the settlement. As to the class notice: 4. The class notice continues to contain terms not defined in the settlement agreement, e.g., "Aggrieved Employees." *See* 1/11/24 Order (ROA 113, ¶ 25). 5. In the first paragraph, "('Class Members')" should be moved to after "the Class Period (September 26, 2018 to [date])." *See* 1/11/24 Order (ROA 113, ¶ 26). As to the proposed order (ROA 116): 6. At paragraph 14 line 15 the proposed order refers to "PAGA Recipient," which is not a term defined in the settlement agreement or the proposed order. 7. As stated in the court's January 11, 2024 order (ROA 113, ¶ 13), legal authority is not required for written objections. *See* Proposed Order (ROA 116) ¶ 15. The hearing on plaintiffs' motion for preliminary approval is continued to August 29, 2024 at 2:00 p.m. in Department CX104 to enable the parties to address and respond to the above issues. *See also* Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement shall be submitted, rather than an "amended settlement agreement," to streamline the court's review of the documents. The parties shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order). Plaintiffs are ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiffs must also serve the LWDA with any supplemental brief and any amended documents, and file a proof of service. Status Conference In its concurrently-issued order, the court continued the hearing on plaintiffs' motion for preliminary approval of a class action and PAGA settlement to August 29, 2024 at 2:00 p.m. in Department CX104. The status conference scheduled for April 25, 2024 at 2:00 p.m. in Department CX104 is vacated. Clerk to give notice.