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ADR Quarterly Case Update – Arbitration Agreement Unconscionability

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California Supreme Court clarifies when trial court should decline to sever arbitration agreement's unconscionable terms.

In *Ramirez v. Charter Communications, Inc.* (Feb. 24, 2025) 108 Cal.App.5th 1297, Angelica Ramirez sued her former employer, Charter Communications, Inc. asserting claims under the California Fair Employment and Housing Act (Gov. Code, § 12940 et seq.). Charter moved to compel arbitration of Ramirez's claims based on the parties' arbitration agreement. The trial court concluded the agreement contained unconscionable provisions and declined to enforce it. The appellate court held the arbitration agreement contained four unconscionable provisions and affirmed the trial court's refusal to enforce the agreement rather than severing the tainted provisions and enforcing the remainder.

Affirmed. The California Supreme Court concurred that three of the four provisions were substantively unconscionable and remanded the matter back to the appellate court to consider the severance question anew. Civil Code Section 1670.5(a) allows courts to either refuse to enforce an arbitration agreement with unconscionable terms, or to enforce the remainder of the contract without the unconscionable provisions. The California Supreme Court clarified that no "bright–line –rule" requires courts to refuse enforcement if a contract has more than one unconscionable term. Instead, the appropriate inquiry is qualitative and courts should ask whether the central purpose of the contract is "tainted with illegality." If so, the contract cannot be cured, and the court should refuse to enforce it. If that is not the case, the court should go on to ask whether the contract's unconscionability can be cured through severance or restrictions of its terms, or whether reformation by augmentation is necessary. Heeding this instruction, the court of appeal determined, based on the totality of the circumstances, that the arbitration agreement was permeated by unconscionability and should not be enforced. In particular, severing such an agreement with a stark lack of mutuality would incentivize employers to draft one–sided agreements and would not further the interests of justice. Therefore, the trial court's refusal to sever the unconscionable provisions and enforce the agreement was correct.

Arbitration agreement was unconscionable and unenforceable due to oppressive terms, prohibitively high fees, and language plaintiff did not speak.

In *Sanchez v. Superior Cout (Consumer Defense Legal Group)* (Feb. 3, 2025) 108 Cal.App.5th 615, Justo Malo Sanchez filed a legal malpractice action against Consumer Defense Law Group and others. Defendants moved to compel arbitration of the lawsuit. The trial court tentatively denied the motion, before changing its mind and granting the motion. Sanchez filed a petition for

extraordinary relief from the court's order granting Defendants' motion to compel arbitration. He claimed the arbitration agreement was procedurally and substantively unconscionable as an adhesive contract and he could not afford the arbitration fees and costs.

Petition granted. An agreement to arbitrate may be rendered unenforceable if it contains terms that are procedurally and substantively unconscionable. Here, the agreement contained both. It was procedurally unconscionable as a contract of adhesion, made on a "take-it-or–leave-it" basis, and because Sanchez was not advised, nor given the time, to seek an attorney to review the agreement. It also contained unfair surprise in light of Sanchez's limited English skills. The arbitration agreement was wholly in English, and Sanchez was given no translation or explanation in Spanish. In addition, the agreement was unenforceable because the arbitration fees were prohibitively high and beyond what Sanchez could pay. Therefore, the arbitration agreement was unenforceable.

"The arbitration agreement was wholly in English, and Sanchez was given no translation or explanation in Spanish."

However, arbitration agreement was not unconscionable where it sufficiently provided for the possibility of third-party discovery.

In *Vo v. Technology Credit Union* (Feb. 4, 2025) 108 Cal.App.5th 632, Plaintiff Thomas Vo signed an arbitration agreement when he began his employment with Defendant Technology Credit Union (TCU). He contracted COVID-19, developed long-term symptoms, was terminated, and then sued TCU for violations of the Fair Employment and Housing Act. TCU moved to compel arbitration and stay all proceedings. The trial court, relying in part on *Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, found the arbitration agreement unconscionable as an adhesion contract because it failed to incorporate the California Arbitration Act Rules(Code of Civil Procedure § 1283.05) allowing the arbitrator to compel prehearing third-party discovery.

Reversed and remanded with instructions. Because of the strong public policy considerations favoring arbitration, it may be compelled, providing the underlying arbitration agreement provides for more than minimal discovery. *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83, 102. Here, the appellate court reviewed the factors recently enunciated by the California Supreme Court in *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, to evaluate whether the agreement's discovery provisions were unconscionable, and determined they were not. Regarding third-party discovery in particular, and disapproving the narrow holding in *Aixtron, Inc. v. Veeco Instruments, Inc.* (2020) 52 Cal.App.5th 360, the appellate court concluded in this case that the JAMS Rules, which were incorporated by reference, sufficiently provided the arbitrator with the authority to make additional nonparty discovery available if necessary. This factor insured fairness in the arbitration process and met the "more than minimal" discovery standard expressed in *Ramirez*. Therefore, the trial court's denial of the motion to compel was reversed and the case remanded with instructions to grant TCU's motion to compel arbitration.

"[T]he appellate court concluded in this case that the JAMS Rules, which were incorporated by reference, sufficiently provided the arbitrator with the authority to make additional nonparty discovery available if necessary."

Strict payment provisions of CCP § 1281.98 supersede § 473(b)'s discretionary relief for mistake, surprise, or excusable neglect.

In *Colon-Perez v. Security Industry Specialists* (Jan. 29, 2025) 108 Cal.App.5th 403, Plaintiff Jenny-Ashley Colon-Perez sued Defendant Security Industry Specialist for employment-related claims. The parties stipulated to arbitration and stayed the proceedings. On December 14, 2022, the American Arbitration Association emailed Defense Counsel advising that, pursuant to Code of Civil Procedure Section 1281.98, AAA had to receive payment for the arbitrator's fee within 30 days from the date of the notice to avoid closure of the case. The deadline was January 13, 2023. Notwithstanding a December 29, 2022, courtesy reminder to the parties, Defendant failed to make timely payment, ultimately paying on January 19, 2023. Soon thereafter, Plaintiff moved to vacate the order compelling arbitration under Section 1281.98. After the trial court granted the motion, Defendant moved to vacate the order under Code of Civil Procedure Section 473(b), which provides for discretionary relief due to the fact that Defense Counsel's home had been flooded. The trial court ruled against Defendant and denied the motion. Defendant appealed.

"[A]ny excuse, reasonable or not, as to an employer's failure to meet section 1281.98's 30–day payment requirement could not justify relief, making section 473(b) inapplicable in this situation."

Affirmed. Section 473(b) allows a party to request relief from a judgment, dismissal, or other proceeding if it was the result of mistake, surprise, or excusable neglect. Here, the appellate court concluded that despite Sections 473(b)'s discretionary allowance afforded to trial courts, it could not be applied in situations involving Section 1281.98, which supersedes the discretionary relief under section 473(b). The plain language, legislative purpose, and statutory history of Section 1281.98 supported strict application of the statutory deadline requirement. Accordingly, any excuse, reasonable or not, as to an employer's failure to meet section 1281.98's 30–day payment requirement could not justify relief, making section 473(b) inapplicable in this situation.

Employer cannot compel arbitration by contracting around the Ending of Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 in choice-of-law provision.

In *Casey v. Superior Court (D.R. Horton)* (Feb. 3, 2025) 108 Cal.App.5th 575, Petitioner Kristin Casey sued her employer, D.R. Horton, Inc. and one of its employers. Defendants filed a motion to compel arbitration. Casey opposed the motion, relying on the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (9 U.S.C. §§ 401–402, EFAA). This federal law permits plaintiffs to elect to render arbitration agreements unenforceable in cases relating to a sexual harassment dispute. The trial court granted the motion to compel, reasoning that the EFAA was inapplicable because the parties' employment agreement specified that California law governed. Casey then filed this petition for a writ of mandate.

"The EFAA preempts attempts under state law to compel arbitration of cases relating to a sexual harassment dispute, and parties cannot contract around the law by way of a choice-of-law provision."

Petition granted. The EFAA preempts attempts under state law to compel arbitration of cases relating to a sexual harassment dispute, and parties cannot contract around the law by way of a choice-of-law provision.

Plaintiffs must submit their employment claims to arbitration pursuant to arbitration agreement even if Defendant failed to initiate arbitration.

In *Arzate v. ACE American Insurance Company* (Feb. 19, 2025) 108 Cal.App.5th 1191, Plaintiffs Michelle Arzate and others filed a wage-and-hour class action against their employer, ACE American Insurance Company. As part of the onboarding process, Plaintiffs signed arbitration agreements requiring any person having "employment related legal claims" to "submit them to ... arbitration" within 30 days They also require the "party who wants to start the [a]rbitration [p]rocedure" to begin the process by filing a demand for arbitration. The trial court concluded that the obligation to commence arbitration lay with the ACE, rather than with the Plaintiffs, who had consistently resisted arbitration. In the trial court's view, ACE waived its right to arbitrate the dispute by failing to file its motion to compel arbitration within 30 days. ACE appealed, arguing the trial court misinterpreted the contractual language.

"[T]he Plaintiffs were required to initiate arbitration, and ACE did not breach the arbitration agreements or waive its right to arbitration by failing to submit the Plaintiffs' claims for them."

Reversed. Under Civil Code Section 1641, "the whole contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Here, the Plaintiffs expressly agreed to "submit" their claims to arbitration. In context, the agreements' language concerning the "party who wants to start the [a]rbitration [p]rocedure" refers to the party that seeks to assert a legal claim governed by the arbitration agreements. In this case, that was the Plaintiffs, not ACE. Thus, the Plaintiffs were required to initiate arbitration, and ACE did not breach the arbitration agreements or waive its right to arbitration by failing to submit the Plaintiffs' claims for them. The trial court's order denying ACE's motion to compel arbitration was reversed.

Trial court properly declined to compel arbitration of representative-only PAGA action.

In *Rodriguez v. Packers Sanitation Services, Ltd., LLC* (Feb. 26, 2025) 109 Cal.App.5th 69, Plaintiff Jose A. Parra Rodriquez (Parra) was employed by Defendant Packers Sanitation Services, Ltd., LLC. He signed an arbitration agreement in the onboarding process. After his employment was terminated, Parra filed a complaint against Defendant "in a representative capacity only" pursuant to the Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.). Defendant moved to compel arbitration under the parties' arbitration agreement, excepting those claims "not subject to arbitration under current law;" and argued that *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, required Parra's "individual PAGA claim" be compelled to arbitration, and any remaining non-individual PAGA claims be dismissed. Parra countered that to the extent he was found to have agreed to individual arbitration, his PAGA action lacked an individual component. The trial court refused to compel arbitration and Defendant appealed.

"[T]he appellate court emphasized that Parra was not seeking individual PAGA relief, observing that the caption, "JOSE A. PARRA RODRIGUEZ, in a Representative Capacity only and on behalf of other members of the public similarly situated," clearly and unequivocally removed any reference to "individual" of "individually." Accordingly, the trial court properly declined to compel arbitration."

Affirmed. In a section of the *Viking River* decision considered dicta, the U.S. Supreme Court stated that when an individual PAGA claim is compelled to arbitration, the non-individual PAGA claims that remain should be dismissed for lack of statutory standing. However, in *Adolph v. Uber Technologies, Inc.,* (2023) 14 Cal.5th 1104, 1109, the California Supreme Court subsequently disagreed, holding that PAGA standing requires that the plaintiff be an "aggrieved

employee," meaning they were (1) "employed by the alleged violator," and (2) against whom one or more of the alleged violations was committed. Consequently, an order compelling arbitration of individual claims does not strip a plaintiff of standing to litigate claims on behalf of other employees under PAGA because plaintiff remains an aggrieved employee. Here, the appellate court emphasized that Parra was not seeking individual PAGA relief, observing that the caption, "JOSE A. PARRA RODRIGUEZ, in a Representative Capacity only and on behalf of other members of the public similarly situated," clearly and unequivocally removed any reference to "individual" of "individually." Accordingly, the trial court properly declined to compel arbitration. Finally, the appellate court asked the question whether it was permissible to assert a non-individual PAGA claim in the first instance, though declined to address the issue since it was not raised by the appeal.

Online user may avoid arbitration because she did not unambiguously manifest her assent to conspicuous terms of use (9th Cir.).

In *Chabolla v. ClassPass, Inc.* (Feb. 27, 2025) 129 F.4th 1147, Katherine Chabolla purchased a one-month subscription of fitness and wellness classes from ClassPass, Inc. The first month was at a discounted rate, subject to monthly renewal at the standard rate. During the sign-up process, Chabolla navigated through a landing page and three screens that, despite referencing additional terms of use, intermingled them with other announcements or presented them in the smallest font on the page. The terms of use included an arbitration clause. After the onset of the COVID-19 pandemic, ClassPass paused monthly charges, resuming them a year later. Chabolla filed a putative class action alleging ClassPass violated California's Automatic Renewal Law. ClassPass moved to compel arbitration. The district court denied the motion. ClassPass appealed.

"In the Internet context, a sign-in wrap agreement may be an enforceable contract if (1) the website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action that unambiguously manifests assent to those terms."

Affirmed. To form a contract, there must be notice of the agreement, and the parties must manifest mutual assent. To manifest mutual assent through conduct, a party must intend the conduct and know, or have reason to know, the other party may infer assent from the conduct. In the Internet context, a sign-in wrap agreement may be an enforceable contract if (1) the website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action that unambiguously manifests assent to those terms. Importantly, reasonable conspicuousness alone is insufficient to bind a user. The user must agree to the terms, not merely see them. Accordingly, the notice must explicitly notify a user of the legal significance of the action needed to enter into a contractual agreement. Here, nothing on any of the screens presented during the sign–in process unambiguously informed Chabolla of the terms to which she was agreeing and indicated what actions she could take that would manifest her assent to those terms. Thus, she was not bound by the terms of the agreement, including the arbitration clause.

Stalemate caused by procedural issues in consolidated JAMS arbitration did not constitute defendant's refusal to engage in arbitration pursuant to its terms of use (9th Cir.).

In *Jones v. Starz Entertainment, LLC* (Feb. 28, 2025) 129 F.4th 1176, Plaintiff Kiana Jones, along with thousands of other claimants represented by the same law firm, commenced dispute -resolution proceedings against Starz

Entertainment, LLC pursuant to the company's Terms of Use, alleging violations of federal and state privacy laws. Jones' arbitration demand was one of 100,978 identical demands. Judicial Arbitration and Mediation Services was the arbitration provider designated in the Terms. It ordered consolidation of the claims to be heard by a single arbitrator. The arbitration proceeding halted in a procedural stalemate after a substantial number of claimants repeatedly disqualified prospective arbitrators appointed by JAMS. Jones petitioned the district court to compel individual arbitration on the basis that the delays caused by consolidation of filings amounted to Starz's refusal to engage in an individual bilateral arbitration. The district court denied the petition, holding that Jones was not "aggrieved" within the meaning of the Federal Arbitration Act, and that the court's limited role did not extend to the procedural issue of consolidation.

"The decision by JAMS to consolidate the cases under its own rules as incorporated by the parties' agreement did not constitute Starz's refusal to arbitrate, nor did it present a gateway question of arbitrability demanding the district court's attention."

Affirmed. The FAA provides that a "party aggrieve by the alleged failure, neglect, or refusal of another to arbitrate" may petition the federal district court to compel arbitration under 9 U.S.C. Section 4. Here, the Ninth Circuit rejected Jones' argument that she was "aggrieved" because it found that Starz never failed, neglected, or refused to arbitrate. The decision by JAMS to consolidate the cases under its own rules as incorporated by the parties' agreement did not constitute Starz's refusal to arbitrate, nor did it present a gateway question of arbitrability demanding the district court's attention.

Ford could not compel arbitration as third-party beneficiary of financing contract between dealership and car buyer.

In *Ballesteros v. Ford Motor Co.* (Mar. 25, 2025) 2025 WL 900014, Armando Ballesteros purchased a Ford vehicle from Fairview Ford Sales dealership. To finance the purchase, he was required to sign a preprinted arbitration agreement form with Fairview that contained an arbitration clause. The vehicle turned out to be a lemon and Plaintiff sued Fairview and the manufacturer, Ford Motor Company, alleging warranty violations under the Song–Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.). Both Fairview and Ford sought to compel arbitration. Ford argued that pursuant to *Felisilda v. FCA US* (2020) 53 Cal.App.5th 486, equitable estoppel mandated arbitration. The trial court compelled arbitration as to Fairview, but declined as to Ford, reasoning that the *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, review granted July 19, 2023, S279969, were more applicable because Plaintiff's claims were based on independent warranties under Song-Beverly, and not the Fairview contract. Ford appealed.

"Equitable estoppel's narrow exception of compelling arbitration with a non-signatory of the arbitration agreement would require that the claims against Ford were so interconnected with Fairview's contract that equity would demand arbitration."

Affirmed. Agreements to arbitrate are ruled by contract law principles. Unless there is a clear and unmistakable intent to arbitrate, courts will not infer a waiver of the right to a jury trial. The equitable estoppel exception should only be applied in the rare situation where fairness demands it. Here, there was no agreement between Plaintiff and Ford to arbitrate. The agreement to arbitrate was between Plaintiff and Fairview. Equitable estoppel's narrow exception of compelling arbitration with a non-signatory of the arbitration agreement would require that the claims against Ford were so interconnected with Fairview's contract that equity would demand arbitration. Since Plaintiff alleged warranty claims against Ford, and not contractual claims under the Fairview contract, equity did not demand arbitration. The trial court correctly declined to compel arbitration as to Ford.

In uninsured motorist arbitration, pandemic's Emergency Rule 10 did not extend 5-year deadline in which to arbitrate claim.

In *Prahl v. Allstate Northbrook Indemnity Co.* (Mar. 28, 2025) 2025 WL 942513, Brian Prahl was involved in a multi–vehicle accident. His insurance policy with Defendant Allstate Northbrook Indemnity included uninsured motorist coverage. Because Prahl's settlements with the other parties failed to cover his damages, he requested compensation through his uninsured motorist coverage with Allstate. He asked to arbitrate his claim and Allstate agreed. The arbitration was scheduled for November 2022, though it was delayed because of the unavailability of Prahl's Counsel. In August 2023, Prahl's Counsel contacted Counsel for Allstate to reset the arbitration. Allstate asserted that the five–year limitation set forth in Insurance Code Section 11580.2(i)(2)(A) had expired in May 2023. Prahl petitioned to compel arbitration, arguing that Judicial Council Emergency Rule 10, enacted during the pandemic, extended the five–year requirement by six months. The trial court agreed with Allstate and Prahl appealed.

"[T]he statue clearly states "civil action," which, by its plain meaning, excluded arbitrations, an alternative to civil actions."

Affirmed. Under Section 11580.2(i)(2)(A), uninsured motorist arbitrations must be concluded within five years of initializing arbitration. Emergency Rule 10 provided a six–month extension of civil actions filed before April 2020, thus allowing the total time to bring an action to trial to five years and six months. Here, the appellate court concluded that Emergency Rule 10 was inapplicable. First, the statue clearly states "civil action," which, by its plain meaning, excluded arbitrations, an alternative to civil actions. Furthermore, the terminology used in Emergency Rule 10 further established its inapplicability to civil actions.

Sanctions were proper against attorney who filed frivolous opposition to motion to confirm arbitration award.

In *Plantations at Haywood 1, LLC v. Plantations at Haywood, LLC* (Feb. 10, 2025) 108 Cal.App.5th 803, attorney Kenneth Catanzarite represented the Plaintiffs in a real estate dispute in which his clients claimed they were defrauded into exchanging their interests in an apartment complex for interests in a limited liability company. The matter was ordered into arbitration resulting in a defense Arbitration
Award. Catanzarite filed an opposition to Defendant's petition to confirm the Award, resulting in Defendants moving for monetary sanctions. The trial court confirmed the Award and imposed sanctions on Catanzarite for filing and refusing to withdraw what the trial court deemed a frivolous and factually unsupported opposition. Catanzarite appealed the Award, arguing he was statutorily allowed to file an opposition on behalf of his clients, and that Plaintiffs were free to contest what the Award did or did not "detail," and to address evidence the Arbitrator did not address.

"[A] party's abstract right to oppose a petition, or to persevere arguments for appeal, is not an entitlement to pursue frivolous claims."

Affirmed. Courts do not review the merits of an arbitration award. Judicial review of private arbitration awards is limited to those cases in which a statutory ground to vacate exists -- fraud or corruption. Here, the Court of Appeal noted that a party's abstract right to oppose a petition, or to persevere arguments for appeal, is not an entitlement to pursue frivolous claims. Catanzarite's opposition to the sanctions motion simply repeated the assertions he made in the trial court and in his opening brief on appeal. His insistence that he had a "right" to file an

opposition, combined with his refusal to grapple with contrary authority, did not become more persuasive through repetition. The result, the Court of Appeal concluded, was an appeal that any reasonable attorney would agree was "completely without merit." Consequently, it found no error in the trial court's determination and concluded more sanctions were appropriate because of the frivolous appeal.

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