ADR UPDATE

AUTHOR*

Hon. Michelle R. Rosenblatt (Ret.)

CONTEXT MATTERS WHEN ANALYZING UNCONSCIONABILITY

***Velarde v. Monroe Operations, LLC*, 111 Cal. App. 5th 1009 (2025)**

Monroe Operations, a nationwide corporation doing business as Newport Healthcare, hired Karla Velarde as a care coordinator for one of their residential mental health treatment facilities. On the date of hire, Newport Healthcare required Velarde to sign an arbitration agreement that was buried in a stack of 31 employment documents while the human resources manager stood over her waiting for her to complete the forms before she could be onboarded.

When Velarde stated she was uncomfortable signing the arbitration agreement as she did not understand it, the HR manager made false representations—stating that arbitration would allow any issues to be resolved without either party having to pay for lawyers. In fact, the arbitration agreement provided for an adversarial process with full discovery under the Federal Rules of Civil Procedure and listed other rules for the arbitration with which a lay person would not necessarily be familiar.

At the motion hearing, Newport Healthcare argued that the agreement was not procedurally unconscionable, but even if it was, it was not substantively unconscionable. The trial court denied the motion and Newport Healthcare appealed.

The court of appeal found a high degree of procedural unconscionability because the agreement was a contract of adhesion buried in a stack of other documents, the company rushed Velarde to sign it—denying her meaningful time to review, and the manager misled her as to the nature and terms of the agreement.

The court of appeal also found substantive unconscionability. It noted that looking at the context in which it was signed, the agreement did not conform to Velarde's reasonable expectations due to the false representations about the agreement, made to an employee who had been out of work for nine months and who may have welcomed an inexpensive, speedy and informal resolution of a dispute rather than the procedure set forth in the arbitration agreement.

Thus, the court of appeal affirmed the trial court's finding that the arbitration agreement was unconscionable.

NOTE: This case is also summarized in the discussion of California employment law cases on page 8.

PAGA CLAIM REVIVED IN CASE FILED BEFORE AB 2288

***Osuna v. Spectrum Security Services, Inc.*, 111 Cal. App. 5th 516 (2025)**

Edgar Osuna sued Spectrum Security Services, Inc. in January 2024 for several labor code violations—including individual and class claims and a representative claim under the Private Attorneys General Act (PAGA).[1]

The trial court dismissed the class claims, sustained a demurrer to the PAGA claim without leave to amend, and ordered the individual claims to arbitration. Osuna appealed the sustaining of the demurrer. Spectrum argued that the appeal was premature as the individual labor code claims were still pending.

The court of appeal held that the death knell doctrine provides that an order allowing a plaintiff to pursue an individual claim but preventing it from maintaining a representative PAGA claim is to be treated as a final judgment, operating "as a 'de facto final judgment for absent plaintiffs' and is appealable."

On the issue of standing: Because Assembly Bill 2288, which requires an aggrieved

employee to have personally suffered a PAGA violation within the one year statute of limitations, only applies to lawsuits filed on or after June 19, 2024, it did not apply to this case. Osuna alleged he suffered at least one labor code violation and also ongoing violations, so even if his lawsuit had been filed after the new bill went into effect, there was no statute of limitations issue. The court explained further that the remedy for a labor code violation is distinct from the fact of the violation itself. By alleging that Osuna was employed by Spectrum and suffered one or more violations, this was sufficient to confer standing for him to bring a representative PAGA action.

NOTE: This case is also summarized in the discussion of wage and hour cases on page 14.

'SUBSTANTIVE UNCONSCIONABILITY' IN ARBITRATION + EMPLOYMENT AGREEMENTS

***Silva v. Cross Country Healthcare, Inc.*, 111 Cal. App. 5th 1311 (2025)**

As part of the hiring process, Isabel Silva signed an arbitration agreement and an employment agreement with Cross Country Staffing on the same day. Both agreements covered dispute resolution. The arbitration agreement provided that Silva would arbitrate her claims. In the employment agreement, she agreed to confidentiality, non-competition, and non-solicitation, and also agreed that the employer could litigate in court and recover fees and costs for any breach of these provisions. Critically, the employment agreement specified that it superseded all prior and contemporaneous agreements.

The trial court found that the two contracts should be read together, pursuant to California Civil Code section 1642, as they were both aspects of a single primary transaction: hiring and dispute resolution. The court found a degree of procedural unconscionability and a high degree of substantive unconscionability.

When construed together with the employment agreement, the arbitration agreement was unconscionable because it required arbitration of the employment and labor law claims likely to be brought by workers, while exempting claims likely to be brought by the employer, and contained nonmutual attorney fees provisions. The lack of mutuality and other substantively unconscionable factors were so severe that the court determined that they could not be severed and found the arbitration agreement unenforceable.

The court of appeal affirmed, and agreed with *Alberto v. Cambrian Homecare*,[2] which held that an employer cannot "sidestep" legality by requiring a "weaker party" to simultaneously execute two contracts—one that purports to require arbitration of all claims on equal terms, and a second that supersedes the first contract and has terms favoring the employer—if those two contacts, when read together, render the first contract unconscionable.

ENDNOTES

* Hon. Michelle R. Rosenblatt (Ret.) has been a mediator and arbitrator on a wide range of civil disputes with ADR Services, Inc. since 2016, when she retired from the bench after 23 years of judicial service. She taught judicial education throughout her career on the bench and is a frequent participant in continuing education programs. She also served for five years as editor of the California Judges Association magazine, *The Bench*.

1. Cal. Lab Code §§ 2698-2699.5.

2. *Alberto v. Cambrian Homecare*, 91 Cal. App.5th 482, 491 (2023).