UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JACQUELIN DAVIS, an individual,

Plaintiff,

vs.

O'MELVENY & MYERS LLP, a California Limited Liability Corporation,

Defendant.

CASE NO. CV 04-1338 DT (SSx)

ORDER **GRANTING** DEFENDANT O'MELVENY & MYERS LLP'S MOTION FOR ORDER COMPELLING ARBITRATION AND DISMISSING THIS CASE ACCORDINGLY

I. Background

This action is brought by Plaintiff Jacquelin Davis ("Plaintiff") against Defendant O'Melveny & Myers LLP ("Defendant") for (1) failure to pay overtime wages in violation of the Fair Labor Standards Act; (2) failure to pay wages in violation of California labor law; (3) denial of rest periods; (4) denial of meal periods; (5) violation of Labor Code § 226; (6) violation of Labor Code § 558; (7) declaratory relief; (8) violation of Labor Code §§ 2698 & 2699; and (9)

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violation of Unfair Business Practices Act, Business & Professions Code § 17200, et seq.

A. Factual Summary

The following facts are alleged in the Complaint:

Plaintiff was a former employee of Defendant. (Complaint, ¶ 5.) She was employed from 1998 to June 2003 as a non-exempt paralegal. (Id.)

Defendant regularly and routinely required Plaintiff to work through her one hour lunch periods without pay. (Id. at ¶ 17.) As a result, Plaintiff would work more than 8 hours per day without being paid her full overtime wages and would work more than 40 hours per week without being paid her full overtime wages. (Id.)

Defendant regularly and routinely require employees to work through their morning rest period and afternoon rest period in violation of California law. (Id. at ¶ 19.) It would routinely and regularly require the non-exempt employees to work through their lunch periods and deny their rest periods. (Id. at ¶ 20.)

California Labor Code § 226 requires that employers provide on their paychecks the "inclusive dates of the period for which the employee is paid." (Id. at ¶ 23.) Defendant fails to do this on each and every paycheck of its non-exempt employees. (Id.)

Defendant regularly and routinely tries to enforce to Plaintiff and all of its non-exempt employees a mediation and arbitration agreement that is unconscionable and unenforceable. (Id. at ¶ 25.)

B. Procedural Summary

On February 27, 2004, Plaintiff filed the Complaint. The action was assigned to Judge Fischer.

On March 9, 2004, the action was reassigned to Judge Manella due to Judge Fischer's self-recusal.

On March 18, 2004, the action was reassigned to this Court due to Judge Manella's self-recusal.

On March 18, 2004, Defendant filed a Motion for Order Compelling Arbitration, which is currently before this Court.

II. Discussion

Defendant seeks an order staying or dismissing this action and compelling arbitration. It argues that this action is governed by the parties' arbitration agreement.

A. Background of the Agreement

On August 1, 2002, Defendant distributed to all employees a Dispute Resolution Program ("Agreement") which provided that all disputes arising from an individual's employment with Defendant would be resolved through the steps outlined in the Agreement, the last of which is final and binding arbitration. The Agreement applies to all employees of Defendant and to claims by the employees against Defendant as well as claims by Defendant against its employees.

The Agreement became effective in November 2002. It provides in pertinent part:

> Except as otherwise provided in this Program, effective November 1, 2002, you and [Defendant] hereby consent to the resolution by private arbitration of all claims or controversies, past, present or future, for which a court otherwise would be authorized by law to grant relief, in any way arising out of, relating to, or associated with your employment with [Defendant] or the termination of

> your employment . . . that [Defendant] may have against you or that you may have against [Defendant] . . . . The Claims covered by this Program include, but are not limited to, claims for wages or other compensation due; . . . and claims for violation of any federal, state or other governmental constitution, law, statute, ordinance, regulation or public policy. The obligation to follow this Program survives your employment relationship with [Defendant] and applies to any claim whether it arises or is asserted during or after termination of your employment with [Defendant]."

(Agreement, p. 3, attached as Exh. B to Hanna Decl.)

Plaintiff continued working for Defendant past November 1, 2002, until her termination on July 14, 2003, thereby agreeing to the terms of the Agreement.[1]

B. Applicable Law

The Federal Arbitration Act ("FAA") provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The U.S. Supreme Court and the Ninth Circuit have held that mandatory predispute arbitration agreements in the employment context are enforceable under the FAA,

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[1] The Agreement provides:

> This means that effective November 1, 2002, if you accept or continue employment with the Firm, you and the Firm agree to resolve all legal and other disputes through this Program instead of through the court system.

even where statutory rights are at issue. See, e.g., Circuit City Stores, Inc. v. Adams, 543 U.S. 105, 122-23; 121 S. Ct. 1302; 149 L. Ed. 2d 234 (2001); EEOC v. Luce, Forward, Hamilton & Scripps, 345 F.3d 742, 750 (9th Cir. 2003)(en banc). The Ninth Circuit has confirmed that "arbitration affects only the choice of forum, not substantive rights," Luce Forward, 345 F.3d at 750, and that courts should have a "'healthy regard for the federal policy favoring arbitration.'" Id. at 747 (quoting Gilmer v. Interstate/Johnson Lane Co., 500 U.S. 20, 23 (1991)).

In determining the validity of an arbitration agreement, this Court "should apply ordinary state-law principles that govern the formation of contracts." Circuit City Stores, Inc. v. Adams, 279 F.3d 889, 892 (9th Cir. 2002)(quoting First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)). As such, general contract defenses such as fraud, duress, or unconscionability, grounded in state contract law, apply. Id.

Under California law, an arbitration agreement may be invalidated if it is both procedurally and substantively unconscionable. See Armendariz v. Foundation Health Psychcare Servs., Inc., 24 Cal. 4th 83113-116 (2000); Soltani v. Western & Southern Life Ins., 258 F.3d 1038, 1042-44 (9th Cir. 2001). However, procedural and substantive unconscionability need not be present in the same degree. A sliding scale is applied. See Armendariz, 24 Cal. 4th at 114. "In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." Id.

C. Plaintiff's Contentions

In her Opposition, Plaintiff argues that the Agreement is not enforceable because it is unconscionable. Specifically, she asserts both substantive and procedural unconscionability.

D. Analysis

1. The Agreement is not procedurally unconscionable

In determining procedural unconscionability, a court considers "the equilibrium of bargaining power between the parties and the extent to which the contract clearly discloses its terms." Adams, 279 F.3d at 893. Two factors are considered: oppression and surprise. Ferguson v. Countrywide Credit Industries, Inc., 298 F.3d 778, 783 (9th Cir. 2002). "'Oppression' arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice. 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." Id. (quoting Stirlen v. Supercuts, Inc., 51 Cal. App. 4th 1519 (1997)).

Plaintiff argues that the Agreement was given abruptly to all current employees as an accept it or quit proposition. She claims that it was presented to her with no chance to bargain or negotiate or to modify provisions.

In response, Defendant claims that the Agreement is not procedurally unconscionable because it offered Plaintiff three months to consider the provision and decide whether or not she would agree to be bound by it. It argues that in light of this extended notice and consideration period, Plaintiff had options other than simply agreeing to be bound by continuing her employment because she had three months to seek equivalent employment elsewhere. For the reasons explained below, this Court agrees with Defendant that the Agreement is not procedurally unconscionable.

The Ninth Circuit has held that arbitration agreements which have an "opt-out" clause are not procedurally unconscionable. Circuit City Stores, Inc. v. Najd, 294 F.3d 1104, 1108 (9th Cir. 2002). Here, as Defendant acknowledges, the

Agreement did not have an opt-out clause. Nonetheless, by distributing the Agreement in August of 2002 and providing that it would be effective in November 2002, Defendant did provide Plaintiff a three-month period to ask questions, consult counsel and decide whether it was something she wanted to agree to, and look for alternative employment if she decided it was not. (Agreement, pp. 1-2; Hanna Decl., ¶ 12.) During this three-month period, Plaintiff was paid the same, enjoyed the same benefits and did the same type of work. (Hanna Decl., ¶ 12.)

Defendant cites to Dean Witter Reynolds, Inc. v. Superior Court, 211 Cal. App. 3d 758, 768, 259 Cal. Rptr. 789 (1989). Although Dean Witter is not an employment case, this Court finds that it is analogous to the situation here. In Dean Witter, the plaintiff challenged the legality of certain fees charged by a financial institution in connection with IRA's. The defendant argued that the claim of unconscionability lacked merit because the plaintiff could have gone to a competing financial service and opened an IRA free of the offending provisions. The Court agreed and held that "the 'oppression' factor of the procedural element of unconscionability may be defeated, if the complaining party has a meaningful choice of reasonably available alternative sources of supply from which to obtain the desired goods and services free of the terms claimed to be unconscionable." Dean Witter, 211 Cal. App. 3d at 772. Similarly, here, Plaintiff had the opportunity to seek alternative employment if she found the terms of the Agreement objectionable. She had a choice and ample time to exercise that choice.

Plaintiff, in arguing that "take-it-or-leave" agreements are oppressive, cites to Ingle v. Circuit City Stores, Inc., 328 F.3d 1165 (9th Cir. 2003) and Circuit City Stores, Inc. v. Mantor, 335 F.3d 1101 (9th Cir. 2003). However, in these

cases, the plaintiff was not given a meaningful opportunity to seek alternatives. In Ingle, the plaintiff was a job applicant, and the defendant would not even consider applications from job applicants who elect not to enter into the arbitration agreement. Ingle, 328 F.3d at 1172 n. 4. As the Court stated, "[plaintiff] had no meaningful option; she either had to walk away from the employer altogether or sign the arbitration agreement for fear of automatic rejection or termination at the outset of her employment." Id. In Mantor, even though the plaintiff was given an "opt out" form, the Court found that "management impliedly and expressly pressured [plaintiff] not to opt-out, and even resorted to threatening his job outright should [plaintiff] exercise his putative 'right' to opt-out." Mantor, 335 F.3d at 1106. It held that this pressure and threats demonstrated the lack of a meaningful opportunity to opt-out. Id.

In this case, Plaintiff, unlike the plaintiff in Ingle, was given a "meaningful option." She had three months to inquire and decide whether she would accept the Agreement or seek alternative employment.[2] Further, instead of being given an illusory opt-out option like the plaintiff in Mantor, she was given the real option of seeking information and alternatives. As the Mantor Court noted, "[a]t a minimum, a party must have reasonable notice of his opportunity to negotiate or reject the terms of a contract, and he must have an actual, meaningful, and reasonable choice to exercise that discretion." Id. Here, Plaintiff had both reasonable notice of her opportunity to reject the Agreement and an actual, meaningful and reasonable choice to exercise that discretion. Indeed, the record reflects (Hanna Decl., ¶¶ 7, 11), and Plaintiff does not dispute, that at no time did

[2] It should be noted that Plaintiff was an at-will employee, and as such, had no guarantee of continued employment under the same terms and conditions.

she seek to negotiate, ask questions or reject the terms of the Agreement during the three-month period.

Based on the foregoing, this Court finds that the Agreement is not procedurally unconscionable. Granting this Motion to compel arbitration is therefore warranted. As stated above, California law requires that in order for a contract to be unenforceable due to unconscionability, the contract has to be both procedurally and substantively unconscionable. Armendariz, 24 Cal. 4th at 114.

Because this Court finds that the Agreement is not procedurally unconscionable, it need not make any determination regarding Defendant's allegations of substantive unconscionability. Circuit City Stores, Inc. v. Najd, 294 F.3d 1104, 1108 n. 2 (9th Cir. 2002)("In light of our holding that the [Agreement] is not procedurally unconscionable, we do not consider whether the agreement is substantively unconscionable."). Nonetheless, because this Court finds that the challenged provisions are not substantively unconscionable, this Court sets forth its analysis as further support for its granting of this Motion.

2. The challenged provisions of the Agreement are not substantively unconscionable

A determination of substantive unconscionability involves whether the terms of the contract are unduly harsh or oppressive. Adams, 279 F.3d at 893. The question is whether the terms of the agreement "are so one-sided to shock the conscience." Ingle, 328 F.3d at 1172 (quoting Kinney v. United Healthcare Servs., Inc., 70 Cal App. 4th 1322, 1330 (1999)).

Plaintiff argues that the following provisions of the Agreement are substantively unconscionable: (1) a strict one-year statute of limitations on all wage and hour, tort and employment claims, reducing her fundamental rights under California and federal law where the above claims have statutes of

limitation of 2 to 4 years and allow the continuing violation theory; (2) a confidentiality/gag clause on any mediation or arbitrations she begins; (3) a waiver by employees of their right to file wage and hour claims with California's Division of Labor Standards and Enforcement, or file with OSHA, the SEC or even the California State Bar; and (4) a provision that gives to Defendant the unilateral, one-sided right to go to court for its protection but not allow Plaintiff the same right to go to court. This Court examines each of these arguments.

a. The Notice Provision

Plaintiff claims that the Agreement abridges, reduces and alters state and federal law by improperly imposing a strict 1-year statute of limitations period from the occurrence of the injury for all state and federal claims. She asserts that this is per se unconscionable as it does not allow for continuing violation theories and strictly limits wages claims to only one year when state and federal law provide for 2 to 4 years going back.

The provision at issue ("Notice Provision") provides:

> An employee must give written notice of any Claim to the firm along with a demand for mediation. This notice must be given within one (1) calendar year from the time the condition or situation providing the basis for the Claim is known to the employee or with reasonable effort on the employee's part should have been known to him or her. The same rule applies to any Claim the firm has against an employee, i.e., the firm must give written notice to the employee within one (1) calendar year from the time the condition or situation providing the basis for the Claim is known to the firm or with reasonable effort

> on the firm's part should have been known to the firm. Failure to give timely notice of a Claim along with a demand for mediation will waive the Claim and it will be lost forever.

(Agreement, p. 4.) For the reasons explained below, this Court finds that the Notice Provision is not substantively unconscionable.

As Defendant contends, this provision operates as a mandatory notice provision rather than a statute of limitations provision. In other words, the Agreement requires that an employee give notice of her claim within one year of when she knew, or should have known, that a claim had accrued. By contrast, a statute of limitations period precludes an employee from recovering damages for conduct occurring beyond the time set by the applicable period. Under the provision here, as long as the employee gives notice within the one-year time frame, nothing precludes her from receiving more than a year's worth of damages.

It appears that Plaintiff's main problem with the provision is her belief that the provision "improperly limit[s] remedies and damages of [Plaintiff] and all its employees - in violation of state and federal law." (Opposition, p. 10.) However, nothing in the Agreement restricts Plaintiff's remedies. In fact, the Agreement provides that "[t]he final step - arbitration - is a process by which a dispute is presented to a neutral, third party, just like a judge or jury in a court, for a final and binding decision. . . . If an employee wins, the employee can be awarded anything he or she might seek through a court of law." (Agreement, p. 2.)[3]

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[3] Similarly, applicable rules of the American Arbitration Association, which the Agreement incorporates by reference (Agreement, p. 8.), provide that the arbitrator "may grant any remedy or relief that the arbitrator deems just and equitable, including any remedy or relief that would have been available to the

Moreover, even if the provision is considered a statute of limitations, California law has upheld contractual shortening of statutes of limitations. Soltani v. Western & Southern Ins. Co., 258 F.3d 1038, 1042 (9th Cir. 2001)(enforcing a six-month limitation provision); see also Han v. Mobil Oil Corp., 73 F.3d 872, 877 (9th Cir. 1995)("California permits contracting parties to agree upon a shorter limitations period for bringing an action than prescribed by statute, so long as the time allowed is reasonable)(citations omitted). Indeed, the Ninth Circuit has found that the "weight of California case law" as well as other jurisdictions and the U.S. Supreme Court have upheld contractual clauses shortening the statute of limitations. Soltani, 258 F.3d at 1043-44.

In support of her position, Plaintiff cites Ingle v. Circuit City Stores, Inc., 328 F.3d 1165 (9th Cir. 2003) and Circuit City Stores, inc. v. Mantor, 335 F.3d 1001 (9th Cir. 2003). However, in those cases, the Ninth Circuit found the one-year statute of limitations provisions unconscionable because "the benefit of this provision flow[ed] only to" the employer. Ingle, 328 F.3d at 1175; see also Mantor, 335 F.3d at 1107 n 13. The arbitration agreement at issue in Ingle was expressly found to lack mutuality, and the one in Mantor was remanded for a finding of mutuality. Here, the provision at issue applies mutually to Plaintiff and Defendant; the Agreement states that the notice provision "applies to any Claim [Defendant] has against the employee." (Agreement, p. 4.) As such, this Court finds that Plaintiff has failed to show that the Notice Provision is substantively unconscionable.

b. The Confidentiality Provision

Plaintiff claims that the confidentiality provision is one-sided and unfair.

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parties had the matter been heard in court." (Garrett Decl., Exh. A, § 34.d at 11.)

The provision at issue ("Confidentiality Provision") provides in pertinent part:

> Except as may be necessary to enter judgment upon the award or to the extent required by applicable law, all claims, defenses and proceedings (including, without limiting the generality of the foregoing, the existence of a controversy and the fact that there is a mediation or an arbitration proceeding) shall be treated in a confidential manner by the mediator, the Arbitrator, the parties and their counsel, each of their agents, and employees and all others acting on behalf of or in concert with them. Without limiting the generality of the foregoing, no one shall divulge to any third party or person not directly involved in the mediation or arbitration the content of the pleadings, papers, order, hearings, trials, or awards in the arbitration, except as may be necessary to enter judgment upon the Arbitrator's award as required by applicable law.

(Agreement, p. 10.)

Plaintiff claims that this Confidentiality Provision gives Defendant the advantage of more knowledge since it does repeat arbitrations while it hinders Plaintiff from obtaining information to build her case. She also claims that this Confidentiality Provision violates California Labor Code § 232.5 which forbids employers from requiring that employees refrain from disclosing working conditions, or from disciplining or discriminating against them if they do so.

In response, Defendant first points out that the Confidentiality Provision contains a qualifier - "to the extent required by applicable law," which subordinates the provision to any contrary rule of law. This Court agrees with Defendant that this qualifier undermines any claim of substantive unconscionability with respect to Plaintiff's argument that the Confidentiality Provision violates Labor Code § 232.5. To the extent that the Confidentiality Provision runs afoul of Labor Code § 232.5, Labor Code § 232.5 would govern. In any event, notwithstanding the qualifier, nothing in the Confidentiality Provision prohibits Plaintiff from discussing her working conditions.

In support of her claim that the Confidentiality Provision is unconscionable because it favors Defendant by prohibiting Plaintiff from obtaining information regarding claims made by other individuals, Plaintiff relies on Ting v. AT&T, 319 F.3d 1126, 1152 (9th Cir. 2003) and Acorn v. Household International, Inc., 211 F. Supp. 2d 1160, 1172 (N.D. Cal. 2002). In Ting, the Court explained the "repeat player" effect, which, when a company imposes a gag order, puts plaintiffs at a disadvantage because they do not have access to precedent, while companies continually arbitrate the same claims. Ting, 319 F.3d at 1151-52. However, as Defendant asserts, the cases relied on by Plaintiff do not address the real privacy concerns inherent in employment arbitration. These concerns involve not only the employee/claimant but also the co-workers and supervisors. As Defendant represents, the Confidentiality Provision is meant to protect personnel files, evaluations, medical information, and other documents concerning individuals who are not a party to the arbitration, as well as confidential information about clients, which may be released in discovery or presented as comparator or baseline information. The Ting and Acorn cases dealt with consumer agreements, not employment agreements, and no privacy concerns

were mentioned. This Court find that this difference is significant enough to preclude a finding of unconscionability based on these cases.[4]

c. Prohibition on Administrative Actions Provision

Plaintiff argues that the Agreement has a provision that limits the California state enforcement agencies that Plaintiff can file with, and that this provision does not allow for filing claims with the State Labor Commissioner, the Division of Labor Standards Enforcement ("DLSE"), the California Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal or state agencies.

The provision at issue ("Administrative Actions Provision") provides:

> Except as otherwise provided in the Program, neither you nor the firm will initiate or pursue any lawsuit or administrative action (other than filing an administrative charge of discrimination with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the New York Human Rights Commission or any similar fair employment practices agency) in any way related to or arising from any Claim covered by this Program.

(Agreement, p. 4.)

Defendant responds that the cases relied on by Plaintiff do not support her position and that recent California caselaw has stated definitively that

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[4] Furthermore, to the extent that these cases were to represent California law forbidding confidentiality clauses in California arbitration contracts, the qualifier in the Confidentiality Provision at issue would operate to bar the Confidentiality Provision in California.

individuals may waive the right to pursue victim specific remedies before the DLSE. This Court agrees with Defendant's arguments.

Plaintiff first cites Armendariz for the proposition that "it is evident that an arbitration agreement cannot be made to serve as a vehicle for the waiver of statutory rights created by the [Fair Employment Housing Act]." Armendariz, 24 Cal. 4th at 101. However, this statement is used out of context. First, the provision at issue here specifically exempts proceedings before the Department of Fair Employment and Housing, making this statement inapplicable on its face. Further, the Armendariz Court never mentioned the other agencies Plaintiff lists and was not even discussing administrative filings in the section cited. Instead, the Court posed the question of whether a mandatory predispute arbitration agreement which covered statutory claims necessarily constituted a waiver of statutory rights. See id. at 100-101. The Court answered this question in the negative so long as certain protections were in place. See id. Thus, Armendariz does not address the issue of whether administrative actions may be waived in favor of arbitration.

Plaintiff also cites to Ralph's Grocery Co. v. Massie, 116 Cal. App. 4th 1031, 11 Cal. Rptr. 3d 65 (2004). Massie involved a former employee who filed an administrative charge with the DLSE in violation of his agreement to arbitrate employment disputes. Because the trial court failed to determine whether the arbitration agreement was unenforceable as unconscionable, the case was remanded for that determination. See id. at 1039. The appellate court advised the trial court that, pursuant to preemption analysis under the FAA, the arbitration agreement would function to stay the administrative proceedings to the extent that individual-specific damages and remedies were sought, since the DLSE's interest was derivative of the employee's interest, and the employee had agreed to arbitrate

his dispute. See id. at 1041. By contrast, here, Plaintiff is seeking primarily individual-specific relief in the form of back wages and damages. Under Massie, then, even if the Agreement did not contain the provision at issue, Plaintiff would still be barred from seeking such relief through the DLSE. Plaintiff is free to pursue both individual-specific and non individual-specific relief at the arbitration. Further, nothing in the Agreement prevents the DLSE from seeking relief that is not individual-specific, and Defendant represents that the Agreement was not intended to operate otherwise.

Thus, this Court finds that there is nothing substantively unconscionable in the provision at issue here. As Defendant states, the whole purpose behind arbitration provisions is to compel parties to arbitrate any disputes that may arise. It would be non-sensical to interpret these provisions to prohibit lawsuits in contravention of the agreement yet allow administrative actions under these same agreements.

d. Exempted Claims Provision

Plaintiff argues that the Agreement has a provision that is one-sided in that it allows only Defendant to file a court action for certain claims but does not allow an employee the same right to file a court action for their privacy and confidentiality claims.

The provision at issue ("Exempted Claims Provision") provides the following:

> This Program does not apply to or cover claims for workers' compensation benefits; claims for unemployment compensation benefits; claims by the firm for injunctive and/or other equitable relief for violations of the attorney-client privilege or work product doctrine

> or the disclosure of other confidential information; or claims based upon an employee pension or benefit plan, the terms of which contain an arbitration or other nonjudicial dispute resolution procedure, in which case the provisions of that plan shall apply.

(Agreement, p. 4.)

In response, Defendant points out that while the Agreement excludes four types of claims from its purview, only one of these is a type that Defendant might bring - to seek judicial relief in order to protect legal privileges and client confidences. It argues that the injunctive relief carveout is proper under the "business realities" principle enunciated by the California Supreme Court.

This Court finds that this provision is not substantively unconscionable. In Armendariz, the California Supreme Court provided that it might be acceptable for an employer to compel an employee to arbitrate certain claims, while reserving a judicial remedy for itself where "there is some reasonable justification for such one-sidedness based on 'business realities.'" Armendariz, 24 Cal. 4th at 117. Defendant has justified the reservation provided in the provision at issue on the basis that it is legally and ethically bound to protect the confidential and privileged nature of the communications it has with its clients, as well as the confidentiality of many of the documents that it receives from them. See Cal. Bus. & Prof. Code § 6068(e) ("It is the duty of an attorney to . . . maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."). This Court agrees that the narrow exception contained in the provision - applicable only to privileges and confidential material and providing only injunctive relief - properly addresses Defendant's statutory obligations.

In her Opposition, Plaintiff fails to address the "business realities" exception provided by the California Supreme Court. Instead, she generally claims that the Exempted Claims Provision is "one-sided." However, as explained above, Plaintiff ignores the Armendariz exception. In addition, she ignores the fact that the three other exempted claims are ones that only an employee would bring, i.e., workers' compensation, unemployment insurance, and claims based on employee benefit or pension plans. As such, Plaintiff's blanket assertions fail to establish any substantive unconscionability of this provision.

In sum, after a review of the above challenged provisions, this Court finds that those provisions are not substantively unconscionable. As such, the Agreement would not be unenforceable on this additional basis, and compelling arbitration of Plaintiff's claims pursuant to the Agreement remains warranted.

III. Conclusion

Accordingly, this Court **grants** Defendant O'Melveny & Myers LLP's Motion to Compel Arbitration and hereby dismisses this case accordingly, without prejudice, to allow Plaintiff to pursue her claims for relief in the appropriate forum.

IT IS SO ORDERED.

DATED: MAY 10, 2004

DICKRAN TEVRIZIAN

Dickran Tevrizian, Judge
United States District Court