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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

BILLY BOWLIN,  
  
                        Plaintiff,  
  
                v.  
  
GOODWILL INDUSTRIES OF THE  
GREATER EAST BAY, INC.,  
  
                        Defendant.

Case No. 12-cv-01593 NC  
  
**ORDER CONTINUING MOTION  
FOR SUMMARY JUDGMENT  
HEARING**  
  
Re: Dkt. Nos. 29, 34

Plaintiff Billy Bowlin brings this suit against Defendant Goodwill Industries of the Greater East Bay, Inc., his former employer, for withholding of wages, failure to pay overtime, unlawful business practices, and wrongful termination. Bowlin moves for partial summary judgment as to Goodwill’s twenty-sixth affirmative defense, arguing that an agreement between the parties imposing a six month limitation on the time in which Bowlin may bring claims against Goodwill is unconscionable, and thus unenforceable. The issue is whether summary judgment is premature based on the evidence submitted by the parties. Because Goodwill fails to address Bowlin’s assertion of procedural unconscionability, the Court DEFERS ruling on the motion and CONTINUES the hearing.

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1 **I. BACKGROUND**

2 **A. Bowlin’s Motion for Partial Summary Judgment**

3 Bowlin moves for partial summary judgment arguing that the agreement, which  
4 Goodwill asserts bars his employment claims, is unconscionable. Dkt. No. 29. He  
5 contends that the agreement is procedurally unconscionable because no one from Goodwill  
6 reviewed the terms of the agreement with him, he was not able to discuss or negotiate the  
7 terms, and he was given the agreement to sign while he was working. Dkt. No. 29-1.  
8 Bowlin argues that the agreement is substantively unconscionable because the sixth month  
9 limit it imposes on claims brought by an employee against Goodwill is unreasonable,  
10 benefits Goodwill to the detriment of the employee, and contravenes statutory rights  
11 afforded by the Fair Labor Standards Act and California law. Dkt. No. 29 at 10-15.

12 In addition, Bowlin claims the agreement is void under California Labor Code  
13 § 206.5, which invalidates waivers and releases when wages are due to an employee. *Id.* at  
14 15-16. He argues that because he was made to sign the agreement two months after  
15 beginning his job at Goodwill, he was owed wages, and any release of his rights as a  
16 condition to receive those wages is void. *Id.* at 16.

17 **B. Goodwill’s Opposition to the Motion and Objection to Bowlin’s Declaration**

18 Goodwill opposes the motion on the grounds that there is an enforceable contract that  
19 bars Bowlin’s untimely claims. Dkt. No. 32. It disputes Bowlin’s assertion of procedural  
20 unconscionability, *id.* at 4, and submits the declaration of a human resources administrator  
21 who explains Goodwill’s process of presenting the agreement to new employees, dkt. no.  
22 32-1. Goodwill argues that there is nothing inherently unreasonable about the six month  
23 limitation on bringing claims against it, and that California law recognizes the rights of  
24 parties to shorten statutes of limitations by contract. Dkt. No. 32 at 7-8. Goodwill  
25 contends that Bowlin’s motion is premature because discovery has just begun and because  
26 Bowlin has failed to show that there is no dispute as to the material facts. *Id.* at 9-10.

27 Goodwill also objects to the admissibility of Bowlin’s declaration. Dkt. No. 32-2.  
28 First, Goodwill argues that Bowlin has failed to introduce sufficient proof to support a

1 finding of the facts he alleges, and thus his declaration is irrelevant under Federal Rule of  
2 Evidence 104(b). *Id.* Second, Goodwill argues that Bowlin lacks sufficient personal  
3 knowledge to contend that the contract is one of adhesion. *Id.* These objections are  
4 denied. First, Bowlin’s declaration does not present an issue of conditional relevancy.  
5 Although his declaration may be terse and even conclusory, it is relevant because it makes  
6 the fact of procedural unconscionability, which is of consequence in this case, more  
7 probable. Fed. R. Evid. 401. Goodwill’s attack of the declaration for not providing  
8 specifics goes to the credibility of the evidence, which this Court does not weigh on  
9 summary judgment. Second, Goodwill misstates Bowlin’s declaration in challenging his  
10 personal knowledge. Nowhere in the declaration does Bowlin aver that the contract is one  
11 of adhesion. Rather, he presents that legal argument in his motion for summary judgment.

### 12 **C. Jurisdiction**

13 This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1367. All  
14 parties have consented to the jurisdiction of a magistrate judge in accordance with  
15 28 U.S.C. § 636(c). *See* Dkt. No. 13.

## 16 **II. STANDARD OF REVIEW**

17 Summary judgment may be granted only when, drawing all inferences and resolving  
18 all doubts in favor of the nonmoving party, there are no genuine issues of material fact, and  
19 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex*  
20 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under governing  
21 substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*,  
22 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine if “the evidence is  
23 such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* Bald  
24 assertions that genuine issues of material fact exist are insufficient. *Galen v. County of Los*  
25 *Angeles*, 477 F.3d 652, 658 (9th Cir. 2007).

26 The moving party bears the burden of identifying those portions of the pleadings,  
27 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact.  
28 *Celotex*, 477 U.S. at 323. Once the moving party meets its initial burden, the nonmoving

1 party must go beyond the pleadings and, by its own affidavits or discovery, set forth  
2 specific facts showing that a genuine issue of fact exists for trial. Fed. R. Civ. P. 56(c). “If  
3 a party fails to properly support an assertion of fact or fails to properly address another  
4 party’s assertion of fact as required by Rule 56(c),” the court has discretion to consider the  
5 matter undisputed, grant the motion, give the party the opportunity to address the fact  
6 properly, or issue any other appropriate order. Fed. R. Civ. P. 56(e). Upon a showing from  
7 the nonmoving party that it cannot present facts to justify its opposition, the court may defer  
8 the motion for summary judgment, allow time for discovery, or issue any other appropriate  
9 order. Fed. R. Civ. P. 56(d).

### 10 III. DISCUSSION

11 Bowlin’s claim of unconscionability is premised in part on the unconscionable  
12 procedure by which he was made to sign the agreement. Both procedural and substantive  
13 unconscionability must be present in order for a court to refuse to enforce a contract or  
14 clause under the doctrine of unconscionability. *Soltani v. W. & S. Life Ins. Co.*, 258 F.3d  
15 1038, 1042 (9th Cir. 2001). Bowlin supports his contention of procedural unconscionability  
16 with his declaration, in which he states that “a manager presented [him] with a copy of the  
17 agreement . . . to initial and sign while [he] was working,” that no one “reviewed the terms  
18 or content of the agreement with [him],” and that he “was not able to discuss, negotiate or  
19 modify any of the terms or content of the agreement.” Dkt. No. 29-1 ¶¶ 2-4.

20 Goodwill bears a burden under Rule 56(c) to set forth facts showing a triable issue of  
21 material fact as to the issue of procedural unconscionability. It submits the declaration of  
22 Griselda Guzman, senior human resources administrator. Dkt. No. 32-1. Ms. Guzman  
23 describes the general “intake” and orientation procedure and states that she is “intimately  
24 familiar with the process by which all employees were presented with this form in 2008.”  
25 *Id.* ¶ 5. Ms. Guzman also admits that she “did not personally give Plaintiff Bowlin the  
26 [agreement] at his intake and orientation meeting.” *Id.*

27 These facts do not address Bowlin’s assertions that he was not given time to review  
28 the agreement, that he could not negotiate the terms, and that he was already owed wages at


1 the time the form was given to him to sign, which Rule 56(e) requires. Nor does Goodwill  
2 explain why it cannot present facts that specifically respond to Bowlin's contentions.  
3 Goodwill has not made a showing under Rule 56(d) nor explained why the human resources  
4 person who signed the agreement Bowlin signed cannot attest to the circumstances under  
5 which Bowlin signed the agreement.

#### 6 IV. CONCLUSION

7 In light of the limited evidence presented of procedural unconscionability, the Court  
8 DEFERS ruling on Bowlin's motion for partial summary judgment. The hearing on the  
9 motion currently set for November 7, 2012 is CONTINUED until December 19, 2012 at  
10 1:00 p.m. Accordingly, Bowlin's motion to appear at the hearing by telephone is DENIED  
11 as moot. Goodwill has twenty-eight days from the date of this order to submit additional  
12 facts that respond to Bowlin's assertion or to make a showing of unavailability under Rule  
13 56(d). Bowlin may submit a reply by December 12, 2012 at 5:00 p.m.

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15 IT IS SO ORDERED.

16 Date: November 2, 2012

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19 Nathanael M. Cousins  
20 United States Magistrate Judge  
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