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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CARMEN VALENCIA,  
Plaintiff,

No. C 22-06875 WHA

v.

MATTRESS FIRM, INC.,  
Defendant.

**ORDER GRANTING IN PART  
MOTION TO COMPEL  
ARBITRATION AND DISMISS AND  
STAYING CASE**

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**INTRODUCTION**

In this wage-and-hour representative action brought under California’s Private Attorneys General Act, defendant moves to compel arbitration of the individual portion of plaintiff’s claim and dismiss the representative portion for lack of statutory standing. Plaintiff opposes and requests a stay in anticipation of a forthcoming California Supreme Court decision that will squarely address the standing issue. For the reasons stated below, defendant’s motion is **GRANTED IN PART** and this case is **STAYED**.

**STATEMENT**

Plaintiff Carmen Valencia began working for defendant Mattress Firm, Inc., in October 2017. As part of the employee onboarding process, plaintiff was required to review, acknowledge, and agree to Mattress Firm’s arbitration policy, entitled “Mutual Arbitration Agreement.” The agreement required arbitration of “claims arising under any statutes or

1 regulations applicable to applicants, to employees, or to the employment relationship”  
2 (Hanratty Exh. A). The agreement further provided that plaintiff waived “any right to bring  
3 claims as class, collective, or representative actions” (*ibid.*).

4 Plaintiff initiated the instant suit in the Superior Court for the County of Santa Clara in  
5 September 2022. The complaint generally alleged that Mattress Firm committed a host of  
6 California Labor Code violations during plaintiff’s tenure there, including that it failed to pay  
7 owed wages upon termination, provide proper wage statements, pay premiums for missed meal  
8 breaks, and reimburse business expenses. Based on these allegations, plaintiff brought a  
9 PAGA claim on behalf of herself and other aggrieved employees (Compl. ¶¶ 22–56). Plaintiff  
10 does not seek to certify a class.

11 Mattress Firm removed the action to our district court and now moves to compel  
12 arbitration and dismiss. Plaintiff opposes, arguing that the arbitration agreement is  
13 unenforceable. This order follows full briefing and finds this motion suitable for resolution on  
14 the papers. Civ. L.R. 7-1(b).

### 15 ANALYSIS

16 Under the Federal Arbitration Act, a district court determines “whether a valid arbitration  
17 agreement exists and, if so, whether the agreement encompasses the dispute at issue.”  
18 *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004). “To  
19 evaluate the validity of an arbitration agreement, federal courts should apply ordinary state-law  
20 principles that govern the formation of contracts.” *Ingle v. Circuit City Stores, Inc.*, 328 F.3d  
21 1165, 1170 (9th Cir. 2003) (quotations and citations omitted). If the court is satisfied “that the  
22 making of the agreement for arbitration or the failure to comply therewith is not in issue, the  
23 court shall make an order directing the parties to proceed to arbitration in accordance with the  
24 terms of the agreement.” 9 U.S.C. § 4.

25 Here, plaintiff does not dispute that she signed the arbitration agreement as a condition of  
26 her employment. Rather, she argues that the agreement is unenforceable as unconscionable.  
27 She further contends that the agreement is null and void because the United States Supreme  
28 Court’s recent decision in *Viking River Cruises, Inc. v. Moriana* upheld California’s

1 prohibition on wholesale waivers of PAGA claims. *See* 142 S. Ct. 1906 (2022). This order  
2 addresses each argument in turn.

3 **1. UNCONSCIONABILITY.**

4 Plaintiff argues that her agreement with Mattress Firm was so riddled with  
5 unconscionable provisions that it is unenforceable. This order disagrees.

6 Under California law, a contract provision is unenforceable if it was “unconscionable at  
7 the time it was made.” Cal. Civ. Code § 1670.5(a); *see also Circuit City Stores, Inc. v. Adams*,  
8 279 F.3d 889, 892 (9th Cir. 2002). Unconscionability has both procedural and substantive  
9 elements. These elements are analyzed on a sliding scale: the more substantively unfair, the  
10 less procedurally unconscionable a provision need be for a finding it is unenforceable, and  
11 vice-versa. *Sanchez v. Valencia Holding Co.*, 61 Cal. 4th 899, 910 (2015). But “both must be  
12 present” for a court to deem a contract unenforceable as unconscionable. *Davis v. O’Melveny*  
13 *& Myers*, 485 F.3d 1066, 1072 (9th Cir. 2007) (overruled on other grounds) (emphasis added).  
14 The party resisting arbitration bears the burden of demonstrating unconscionability. *Pinnacle*  
15 *Museum Tower Ass’n v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 246–47 (2012).

16 Here, Mattress Firm’s arbitration policy made clear that “[i]ndividuals who wish to be  
17 considered for employment by Mattress Firm, Inc . . . must read and agree to the following  
18 Mutual Arbitration Agreement” (Hanratty Exh. A (emphasis added)). Some procedural  
19 unconscionability therefore permeates the agreement because plaintiff indisputably lacked  
20 equal bargaining power and the agreement was presented to her on a take-it-or-leave-it basis.  
21 *See Flores v. Transamerica HomeFirst, Inc.*, 93 Cal. App. 4th 846, 853 (2001) (procedural  
22 unconscionability may be shown by “an inequality of bargaining power that results in no real  
23 negotiation and an absence of meaningful choice”); *Armendariz v. Found. Health Psychcare*  
24 *Servs., Inc.*, 24 Cal. 4th 83, 114 (2000).

25 Plaintiff fails, however, to show substantive unconscionability. Relying on *Zullo v.*  
26 *Superior Court*, 197 Cal. App. 4th 477 (2000), plaintiff argues that Mattress Firm  
27 impermissibly limited the scope of the agreement to only cover claims typically brought by  
28 employees. This contention lacks merit. In *Zullo*, an arbitration agreement was “one-sided

1 and harsh” where it only required arbitration of employee claims for equal employment and  
2 nondiscrimination laws. *Id.* at 486. Here, by contrast, our arbitration agreement covers  
3 “claims arising under any statutes or regulations applicable to . . . the employment  
4 relationship,” regardless of the party bringing the claim (Hanratty Exh. A). The agreement is  
5 therefore sufficiently “mutual in scope.” *Serafin v. Balco Props. Ltd.*, 235 Cal. App. 4th 165,  
6 182 (2015).

7 Next, plaintiff objects to a provision of the agreement that allows it to be unilaterally  
8 modified by Mattress Firm (Opp. 7). Under California law, however, such provisions are  
9 enforceable so long as any modifications do not apply retroactively to existing claims. *See*  
10 *Peleg v. Neiman Marcus Grp., Inc.*, 204 Cal. App. 4th 1425, 1433 (2012). Here, the agreement  
11 elaborates that “[a]ny modifications or terminations shall be prospective only and shall not  
12 apply to any claims or disputes that are pending in arbitration or that have been initiated by  
13 either party” (Hanratty Exh. A). Therefore, the provision is not unconscionable.

14 Finally, plaintiff argues that the PAGA waiver included in the agreement is substantively  
15 unconscionable. But as will be discussed below, the PAGA waiver is consistent with the  
16 Supreme Court’s holding in *Viking River* and is thus consistent with applicable law.

17 Plaintiff’s remaining snippets of argument are not supported by authority and lack merit.  
18 In sum, plaintiff has failed to show the presence of *both* substantive and procedural  
19 unconscionability and accordingly has failed to establish unconscionability.

20 **2. WAIVER OF PAGA CLAIM.**

21 This order now turns to the impact of the Supreme Court’s recent decision in *Viking*  
22 *River* on the enforceability of our agreement’s representative action waiver. As background,  
23 PAGA allows an aggrieved employee to seek civil penalties for Labor Code violations  
24 committed against her and other aggrieved employees by bringing, on behalf of California, a  
25 representative action against her employer. *See* Cal. Labor Code § 2699. In *Viking River*, the  
26 Supreme Court held that the Federal Arbitration Act did not preempt a generally applicable  
27 California rule prohibiting “wholesale waiver[s] of PAGA claims.” But the Act *did* preempt a  
28

1 California rule that “preclude[d] division of PAGA actions into individual and non-individual  
2 claims” such that the individual claims could be sent to arbitration. *See* 142 S. Ct. at 1924–25.

3 The provision at issue in *Viking River* “purported to waive ‘representative’ PAGA  
4 claims” and was therefore “invalid if construed as a wholesale waiver.” Because the  
5 agreement included a severability clause, however, the Supreme Court construed the provision  
6 as valid to the extent that it required the “individual” portion of the PAGA claim to proceed in  
7 arbitration. *Ibid.*

8 Here, plaintiff and Mattress Firm each grasp hold of different aspects of *Viking River*.  
9 Plaintiff argues that our arbitration agreement’s representative action waiver qualifies as the  
10 kind of comprehensive waiver of PAGA claims that remains disallowed under California law.  
11 Mattress Firm counters that the decision plainly supports its contention that the individual  
12 portion of plaintiff’s PAGA claim must proceed in arbitration.

13 This order sides with Mattress Firm. True, the agreement provides for the waiver of “any  
14 right to bring claims as class, collective, or representative actions.” The immediately  
15 preceding sentence, however, makes clear that “[a]ll claims covered by this Agreement are  
16 intended to be brought and resolved on an individual basis” (Hanratty Exh. A). This shows  
17 that the phrase “representative actions” refers to non-individual or class claims. The agreement  
18 therefore allows plaintiff to raise the individual portion of her PAGA claim and does not  
19 operate as a wholesale waiver.

20 Even if the waiver were to be read so broadly as to be unenforceable, the agreement  
21 includes a severability clause that is substantively identical to that in *Viking River (ibid.)*.  
22 Thus, Mattress Firm is entitled to enforce the agreement to the extent that it requires plaintiff to  
23 bring the individual portion of her PAGA claim in arbitration.

24 Plaintiff objects that the agreement between the parties did not “contemplate[] future  
25 changes in the law” at the time it was signed (Opp. 7). This does not convince. As Mattress  
26 Firm rightly points out, the Supreme Court did not change the law in *Viking River*. Rather, the  
27 Court interpreted existing statutes to find a conflict between the Federal Arbitration Act and  
28 the California rule at issue. *See Bostock v. Clayton City*, 140 S. Ct. 1731, 1753 (2020) (“The

1 place to make new legislation, or address unwanted consequences of old legislation, lies in  
2 Congress. When it comes to statutory interpretation, our role is limited to applying the law’s  
3 demands as faithfully as we can in the cases that come before us.”).

4 In sum, our arbitration agreement does not contain an unlawful wholesale waiver of  
5 PAGA claims. Consequently, the individual portion of plaintiff’s PAGA claim must proceed  
6 in arbitration.

7 **3. REPRESENTATIVE PORTION OF PAGA CLAIM.**

8 The remaining question is what to do with the representative portion of plaintiff’s PAGA  
9 claim. Mattress Firm does not dispute that its representative action waiver remains  
10 unenforceable as to such claims. Mattress Firm argues, however, that plaintiff lacks statutory  
11 standing to enforce the representative portion of the claim given that the individual portion is  
12 now compelled to arbitration.

13 This issue was also addressed in *Viking River*. After compelling the individual portion of  
14 the plaintiff’s PAGA claim to arbitration, the Supreme Court went on to find that,

15 as [the Court] see[s] it, PAGA provides no mechanism to enable a  
16 court to adjudicate non-individual PAGA claims once an  
17 individual claim has been committed to a separate proceeding . . . .  
18 When an employee’s own dispute is pared away from a PAGA  
19 action, the employee is no different from a member of the general  
20 public, and PAGA does not allow such persons to maintain suit.  
21 As a result, [the plaintiff] lacks statutory standing to continue to  
22 maintain her non-individual claims in court, and the correct course  
23 is to dismiss her remaining claims.

24 142 S. Ct. at 1925 (citations omitted).

25 Mattress Firm insists that the same result is warranted here. For her part, plaintiff asserts  
26 the Supreme Court’s interpretation of California law was based on an erroneous reading of the  
27 California Supreme Court’s decision in *Kim v. Reins Int’l California, Inc.*, 9 Cal. 5th 73 (2020).  
28 *Kim* held that employees do not lose statutory standing to pursue a PAGA claim on behalf of  
other aggrieved employees if they settle and dismiss the individual portion of their claim. *Id.*  
at 80. While *Viking River* declined to extend that principle to the arbitration context, Justice  
Sotomayor noted in her concurrence that “if this Court’s understanding of state law is wrong,  
California courts, in an appropriate case, will have the last word.” 142 S. Ct. at 1925.

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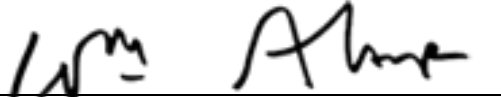
The California Supreme Court has since agreed to hear this precise issue in the pending case *Adolph v. Uber Techs., Inc.*, No. G059860, 2022 WL 1073583 (Cal. Ct. App., Apr. 11, 2022), *review granted* (Cal. July 20, 2022). Plaintiff requests a stay until a decision is issued in *Adolph*. This order agrees that a stay is warranted and hereby **STAYS** further proceedings in this case. *See George v. Manheim Invs., Inc.*, 731 F. App'x 624, 627 (9th Cir. 2018).

**CONCLUSION**

For the reasons stated above, defendant's motion to compel arbitration of the individual portion of plaintiff's PAGA claim is **GRANTED**. This case is **STAYED** pending further legal developments on the viability of the representative portion of plaintiff's PAGA claim. All deadlines for this action are hereby **VACATED**. The parties shall please file a joint status report within ten days of the California Supreme Court entering a decision in *Adolph*. If no decision has been entered by **JUNE 2, 2023**, the parties shall file a status report by **NOON** on that date.

**IT IS SO ORDERED.**

Dated: February 16, 2023.



WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE