IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL CASTRO,

Plaintiff,

v.

CINTAS CORPORTATION NO. 3, a Nevada Corporation,

Defendant.
_____/

No. C 13-5330 CW

ORDER GRANTING MOTION TO STAY PROCEEDINGS (Docket No. 19)

Plaintiff Manuel Castro brought this putative class action against his former employer, Defendant Cintas Corporation No. 3, alleging various wage-and-hour violations. Defendant Cintas moves to compel arbitration of Plaintiff's individual claims and to stay these proceedings pending the outcome of that arbitration. Plaintiff opposes the motion. The Court took the matter under submission without oral argument and now grants the motion.

BACKGROUND

Cintas, a Washington corporation with headquarters in Ohio, provides a variety of specialized services to businesses throughout the United States and Canada. In April 2006, it hired Plaintiff to work as a sales representative at its Gilroy, California location. Plaintiff held that position until Cintas terminated his employment in August 2013. He filed this action in Santa Clara County Superior Court two months later, alleging that Cintas violated various provisions of the California Labor Code by failing to provide its employees with meal and rest breaks, overtime pay, and timely payments of final wages. He also asserted claims against Cintas under California's Unfair

Competition Law, Bus. & Prof. Code §§ 17200 et seq., and the Private Attorneys General Act (PAGA), Cal. Labor Code §§ 2698 et seq. Cintas removed the action to federal court in November 2013.

One month later, instead of filing an answer or a motion to dismiss, Cintas filed the instant motion to stay. In its motion, it contends that Plaintiff's individual claims are subject to binding arbitration under an agreement which he signed in May 2012, while he was a Cintas employee. That agreement, entitled "California Employment Agreement for Sales, Services, and Marketing Personnel," contains the following provision:

> 8. EXCLUSIVE METHOD OF RESOLVING DISPUTES OR DIFFERENCES
>
> Should any dispute or difference arise between Employee and Employer concerning whether either party at any time violated any duty, right, law, regulation, public policy, or provision of this Agreement, the parties will confer and attempt in good faith to resolve promptly such dispute or difference. The rights and claims of Employer covered by this Section 8, including the arbitration provisions below, include Employer's claims for damages, as well as reasonable costs and attorneys' fees, caused by Employee's violation of any provision of this Agreement or any law, regulation or public policy. The rights and claims of Employee covered by this Section 8, including the arbitration provisions below, include Employee's rights or claims for damages as well as reasonable costs and attorneys' fees, caused by Employer's violation of any provision of this Agreement or any law, regulation or public policy. The rights and claims of Employee covered by this Section 8, including the arbitration provisions below, specifically include but are not limited to all of Employee's rights or claims arising out of or in any way related to Employee's employment with Employer, such as rights or claims arising under [federal employment statutes], state or local laws regarding employment, common law theories such as breach of express or implied contract, wrongful discharge, defamation, and negligent

> or intentional infliction of emotional distress[.] Excluded from the arbitration provisions below in this Section 8 are all unemployment benefits claims, workers' compensation claims, claims for a declaratory judgment or injunctive relief concerning any provision of Section 4 of this Agreement [pertaining to Employee's non-disclosure obligations], and claims not lawfully subject to arbitration . . . .
>
> If any dispute or difference remains unresolved after the parties have conferred in good faith, either party desiring to pursue a claim against the other party will submit to the other party a written request to have such claim, dispute or difference resolved through impartial and confidential arbitration. The place of arbitration shall be in the county and state where Employee currently works for Employer or most recently worked for Employer. . . . Arbitration under this Agreement will be conducted in accordance with the [American Arbitration Association]'s National Rules for Resolution of Employment Disputes, except if such AAA rules are contrary to applicable state or federal law, applicable law shall govern.

Docket No. 21, V. Sharpe Decl., Ex. A, Employment Agreement, at 5. The agreement also stated that Plaintiff would receive an increase in pay in exchange for signing the agreement. Id. at 2. Plaintiff signed the agreement on May 11, 2012. Id. at 7. He had previously signed another employment agreement with an identical arbitration provision in May 2011 and signed similar agreements in April 2010, April 2009, and April 2006. Docket No. 27, V. Vig Decl. ¶¶ 5-7, Ex. A.

LEGAL STANDARD

Under the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 et seq., written agreements that controversies between the parties shall be settled by arbitration are valid, irrevocable and enforceable. 9 U.S.C. § 2. A party aggrieved by the refusal of

another to arbitrate under a written arbitration agreement may petition the district court which would, save for the arbitration agreement, have jurisdiction over that action, for an order directing that arbitration proceed as provided for in the agreement. Id. § 4; see also Bridge Fund Capital Corp. v. Fastbucks Franchise Corp., 622 F.3d 996, 1005 (9th Cir. 2010) (noting that the party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence). The FAA further provides that:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . .

9 U.S.C. § 3. If the court is satisfied "that the making of the arbitration agreement or the failure to comply with the agreement is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." Id. § 4. "Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." AT&T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 649 (1986) (citations omitted).

The FAA reflects a "liberal federal policy favoring arbitration agreements." AT&T Mobility LLC v. Concepcion, 131 S.

Ct. 1740, 1745 (2011) (citations and internal quotation marks omitted). A district court must compel arbitration under the FAA if it determines that: (1) there is a valid agreement to arbitrate; and (2) the dispute falls within its terms. Stern v. Cingular Wireless Corp., 453 F. Supp. 2d 1138, 1143 (C.D. Cal. 2006) (citing Chiron Corp. v. Ortho Diagnostic Sys., 207 F.3d 1126, 1130 (9th Cir. 2000)). However, the FAA "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." Concepcion, 131 S. Ct. at 1746; see also Kilgore v. KeyBank, N.A., 673 F.3d 947, 963 (9th Cir. 2012) ("Concepcion did not overthrow the common law contract defense of unconscionability whenever an arbitration clause is involved.").

DISCUSSION

Plaintiff contends that Cintas lacks the authority to enforce the May 2012 employment agreement because it was not a party to that agreement. He further contends that, even if Cintas has the authority to enforce the agreement, the arbitration provision is not enforceable because it is unconscionable. Finally, Plaintiff argues that, regardless of whether or not the arbitration provision is enforceable, his claims in this action fall outside the scope of the provision. As explained further below, none of these arguments is persuasive.

I. Cintas' Authority to Enforce the Employment Agreement

Plaintiff asserts that Cintas cannot enforce the employment agreement against him because it was not a party to the agreement.

He notes that the first page of the agreement refers to "Cintas Corporation" as the "Employer" -- not Cintas Corporation No. 3, the entity named as a Defendant in this suit and whose name appeared on the paychecks he received when he was a Cintas employee.

This argument ignores the first sentence of the agreement, which specifically states that the term "Employer" shall be used to refer not only to Cintas Corporation but also to its "agents, business units, wholly-owned subsidiaries and affiliated companies." Sharpe Decl., Ex. A, at 1. Plaintiff does not dispute that Cintas Corporation No. 3, the entity he has sued, is a wholly owned subsidiary of Cintas Corporation. Accordingly, Cintas Corporation No. 3 may enforce the employment agreement here. See Michaelis v. Schori, 20 Cal. App. 4th 133, 139 (1993) (finding that an "arbitration agreement, although not signed by defendant [] or plaintiff [], nevertheless covers them" because they were made parties to the agreement through a clause binding all agents and associates of the signatory).

II. Unconscionability

Plaintiff contends that the employment agreement is unconscionable under California law. Cintas denies that the agreement is unconscionable and, further, asserts that the agreement should be governed by Ohio law. Because unconscionability is a question of state law, the Court must resolve the parties' choice-of-law dispute before deciding whether the agreement is unconscionable.

A. Choice of Law

Cintas contends that Ohio law governs the employment agreement, citing the following provision of the agreement:

> THIS AGREEMENT WILL BE INTERPRETED, GOVERNED AND ENFORCED ACCORDING TO THE FEDERAL ARBITRATION ACT AND THE SUBSTANTIVE LAW (NOT INCLUDING CHOICE OF LAW PRINCIPLES OR RULES) OF THE STATE OF OHIO.

Sharpe Decl., Ex. A, Employment Agreement, at 5.

"Before a federal court may apply state-law principles to determine the validity of an arbitration agreement, it must determine which state's laws to apply. It makes this determination using the choice-of-law rules of the forum state" -- in this case, California. Pokorny v. Quixtar, Inc., 601 F.3d 987, 994 (9th Cir. 2010) (citing Paracor Fin., Inc. v. Gen. Elec. Capital Corp., 96 F.3d 1151, 1164 (9th Cir. 1996)).

"'When an agreement contains a choice of law provision, California courts apply the parties' choice of law unless the analytical approach articulated in § 187(2) of the Restatement (Second) of Conflict of Laws . . . dictates a different result.'" Bridge Fund Capital, 622 F.3d at 1002 (quoting Hoffman v. Citibank (S.D.), N.A., 546 F.3d 1078, 1082 (9th Cir. 2008); alteration in original). Under this approach,

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied . . . , unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest

> than the chosen state in the determination of the particular issue and which . . . would be the state of the applicable law in the absence of an effective choice of law by the parties.

Restatement (Second) of Conflict of Laws § 187(2). The California Supreme Court has recognized that this approach reflects "a strong policy favoring enforcement" of choice-of-law provisions. Nedlloyd Lines B.V. v. Superior Court, 3 Cal. 4th 459, 464-65 (1992).

Here, Ohio has a direct connection to the parties because Cintas is headquartered there. This is sufficient to establish a "substantial relationship" between the parties and the chosen state. See id. at 467; Restatement (Second) of Conflict of Laws § 187 cmt. f (recognizing that a "substantial relationship" with the chosen state exists where "one of the parties is domiciled or has his principal place of business" there). Further, as other courts have recognized, Ohio's doctrine of unconscionability does not conflict with any "fundamental policy" of California. See Ramirez v. Cintas Corp., 2005 WL 2894628, at *4-*5 (N.D. Cal.) (rejecting plaintiffs' argument that the application of Ohio contract law to an arbitration agreement would "would necessarily violate a fundamental California policy"); Zeif v. Cintas Corporation No. 2, Civil Case No. 13-0413-JVS, Docket No. 17, at 5 (C.D. Cal. April 15, 2013) ("Although the exact parameters of unconscionability under Ohio law differ from those of California, they are similar enough such that the Court concludes that Ohio law on unconscionability is not contrary to a fundamental policy of California."). Plaintiff has not identified any conflict between Ohio's doctrine of unconscionability and a fundamental

policy of California. Accordingly, the May 2012 employment agreement -- and Plaintiff's argument that it is unconscionable -- must be examined under Ohio law.[1]

B. Unconscionability under Ohio Law

Ohio's "unconscionability doctrine consists of two prongs: '(1) substantive unconscionability, i.e., unfair and unreasonable contract terms, and (2) procedural unconscionability, i.e., individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible.'" Jeffrey Mining Prods., L.P. v. Left Fork Mining Co., 143 Ohio App. 3d 708, 718 (2001) (citing Dorsey v. Contemporary Obstetrics & Gynecology, Inc., 113 Ohio App. 3d 75, 80 (1996)). A "plaintiff must prove a quantum of both prongs" to establish that an arbitration agreement is unconscionable. Bozich v. Kozusko, 2009 WL 5150264, at *2 (Ohio Ct. App.) ("A party seeking to invalidate an arbitration clause on grounds of unconscionability must establish that the provision is both procedurally and substantively unconscionable.").

[1] Plaintiff argues that California law should govern the agreement because this Court and the Ninth Circuit have both recently applied California law to determine whether certain arbitration agreements were unconscionable. See, e.g., Correa v. Firestone Complete Auto Care, 2013 WL 6173651 (N.D. Cal.) ("Under California law, an arbitration agreement is unenforceable if it is both procedurally and substantively unconscionable." (emphasis added)). The cases he cites, however, are inapposite because the relevant agreements in those case did not contain choice-of-law provisions and the parties did not dispute that the agreements were governed by California law. See Pokorny, 601 F.3d at 994 ("Under California law, the choice-of-law rules differ depending on whether the parties have included a choice-of-law agreement in their contract."). Furthermore, even if California law did apply, the arbitration would still be enforceable because Plaintiff has not established that the agreement was substantively unconscionable, as explained below.

Plaintiff asserts that the May 2012 employment agreement is both substantively and procedurally unconscionable. Although he relies entirely on California law -- and does not cite any Ohio case or statutory law in his brief -- the Court nevertheless considers his general arguments below.

1. Substantive Unconscionability

Plaintiff contends that the arbitration provision is substantively unconscionable because it lacks mutuality. In particular, he argues that the provision unduly favors Cintas by allowing Cintas to seek declaratory or injunctive relief in a judicial forum if the employee fails to abide by the agreement's non-disclosure requirements.

This argument fails for two reasons. First, under Ohio law, "mutuality is not a requirement of a valid arbitration clause if the underlying contract is supported by consideration." Fazio v. Lehman Bros., Inc., 340 F.3d 386, 397 (6th Cir. 2003) (citing Joseph v. MBNA Am. Bank, N.A., 148 Ohio App. 3d 660, 664 (2002)).[2] As noted above, Plaintiff received a pay raise in exchange for signing the employment agreement. See Sharpe Decl, Ex. A, at 2. Thus, a lack of mutuality is not sufficient to establish that the arbitration provision is substantively unconscionable here under Ohio law. See Raasch v. NCR Corp., 254 F. Supp. 2d 847, 855 (S.D. Ohio 2003) (finding arbitration agreement enforceable even though

[2] Plaintiff cites various California cases for the proposition that a lack of mutuality in an arbitration agreement is evidence of substantive unconscionability. However, the Sixth Circuit has specifically noted that "there is no indication that Ohio courts have adopted the California rule" regarding mutuality. Fazio, 340 F.3d at 396.

it excluded coverage of "disputes over confidentiality, non-compete agreements or intellectual property rights").

Second, the arbitration provision is not as one-sided as Plaintiff represents. Plaintiff fails to acknowledge, for instance, that the provision allows employees to avoid binding arbitration for certain claims, such as claims related to workers' compensation and unemployment benefits. Moreover, the clause that Plaintiff highlights -- allowing Cintas to avoid arbitration for claims arising from breaches of confidentiality -- is relatively narrow and limited to a subset of Cintas's potential claims for equitable relief. All of Cintas's potential claims for monetary relief (including those based on employee breaches of confidentiality) remain subject to binding arbitration. In short, the provision provides both parties to the agreement with reasonable, if narrow, exceptions to the general rule that all of their claims must be arbitrated. Thus, even under California law, this provision would not be substantively unconscionable. Luafau v. Affiliated Computer Servs., Inc., 2006 WL 1320472, at *6 (N.D. Cal.) ("Because the agreement does not lack the requisite modicum of bilaterality with regard to claims covered, the Court finds that the coverage of the arbitration agreement is not substantively unconscionable.").

Plaintiff next argues that the agreement's choice-of-law clause -- which governs the entire agreement and not just the arbitration provision -- is substantively unconscionable because it selects Ohio, rather than California, as the state whose law governs the agreement. Plaintiff fails to explain how this provision is commercially unreasonable. See Featherstone v.

Merrill Lynch, Pierce, Fenner & Smith, Inc., 159 Ohio App. 3d 27, 33 (2004) ("When considering substantive unconscionability, a court should determine whether the terms of the contract are commercially unreasonable."). The choice-of-law provision does not preclude the employee from asserting any claims under another state's law, as Plaintiff seeks to do here, nor does it require the employee to arbitrate any claims in Ohio. Rather, it requires that the agreement itself be construed under the law of Ohio, the state where Cintas is domiciled. This is not enough to render the entire agreement substantively unconscionable under Ohio law.[3] Nor would it be enough to render the agreement unconscionable under California law given that the choice-of-law clause itself is enforceable under California law. Nedlloyd Lines, 3 Cal. 4th at 467 (recognizing that choice-of-law provisions should be enforced when the chosen state has a connection to the parties, such as "when 'one of the parties is domiciled' in the chosen state" (citations omitted)).

Finally, Plaintiff argues that the arbitration provision is unconscionable because it improperly shifts the costs of arbitration to the employee. To determine whether the costs of arbitration are substantively unconscionable, Ohio courts engage in a "case-by-case analysis of the individualized deterrent effect" of those costs. Garcia v. Wayne Homes, LLC, 2002 WL 628619, at *13 (Ohio Ct. App.). This analysis focuses on the claimant's "'ability to pay the arbitration fees and costs, the

[3] The situation would be different, of course, if the chosen state lacked any connection to the parties and had been selected to benefit a specific party.

expected cost differential between arbitration and litigation in court, and whether that cost differential is so substantial as to deter the bringing of claims or cause arbitration to be an unreasonable alternative to the judicial forum.'" Moran v. Riverfront Diversified, Inc., 197 Ohio App. 3d 471, 481 (2011) (quoting Garcia, 2002 WL 628619, at *13). Here, the arbitration provision caps the employee's total arbitration costs at three hundred dollars and even provides a fee waiver for indigent employees.[4] This is less than it would cost the employee to file a complaint in either state or federal court. Accordingly, the arbitration costs imposed on the employee are not so great as to render the arbitration agreement substantively unconscionable under Ohio law. California law would yield the same result. King v. Hausfeld, 2013 WL 1435288, at *18 (N.D. Cal.) (finding arbitration agreement's fee-shifting provision enforceable where it was both "mutual and not unduly burdensome" and did not impede the employee's ability to vindicate his rights in California).

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[4] Specifically, the agreement states,

> Employee's initial share of the arbitration filing fee will not exceed one day's pay or $100, whichever is less . . . . The Arbitrator also will have the authority to award either party appropriate relief, including damages, costs and attorney's fees, as available under relevant laws. In no event, however, will the Arbitrator direct the Employee to pay more than a total of $200 or two days of Employee's pay, whichever is less, toward the fees of the Arbitrator and the AAA. Notwithstanding the above, upon Employee's showing of indigence, as determined by the Arbitrator under applicable law, any arbitration fee or cost that would otherwise be paid by Employee (including any arbitration fee or cost) shall be paid by Employer.

Sharpe Decl., Ex. A, at 5-6.

2. Procedural Unconscionability

Plaintiff contends that the employment agreement was procedurally unconscionable because it was a contract of adhesion presented to him on a take-it-or-leave-it basis as a condition of his continued employment. This argument is not supported by the evidence Plaintiff has submitted.

In particular, Plaintiff has not shown that he was forced to sign the agreement as a condition of his continued employment. While he stated in his declaration that he was "required to sign this agreement in order to receive a raise," he never asserted that he needed to sign it in order to keep his job. Docket No. 23, M. Castro Decl. ¶ 3. The agreement itself confirms this. It states that Cintas would give Plaintiff a raise for signing the agreement but does not state that he was required to sign as a condition of his continued employment. Sharpe Decl., Ex A, at 2 ("As consideration for this Agreement, Employer . . . is increasing Employee's rate of compensation."). Given that Plaintiff was already bound by the terms of an identical agreement which he signed one year earlier, Cintas would have had little incentive to condition his continued employment on the May 2012 agreement.

In any event, Ohio courts have made clear that merely presenting a standardized arbitration agreement to a party of lesser bargaining power on a take-it-or-leave-it basis is not sufficient to establish procedural unconscionability. Deck v. Miami Jacobs Bus. Coll. Co., 2013 WL 394875, at *5 (S.D. Ohio) (rejecting plaintiffs' argument "that the arbitration clause is procedurally unconscionable because it was provided to them on a

'take-it-or-leave-it basis' within a standardized form and thus was an adhesionary clause"); Alexander v. Wells Fargo Fin. Ohio 1, Inc., 2009 WL 2963770, at *3 (Ohio Ct. App.) ("[Plaintiff] argues that the arbitration provision was procedurally unconscionable because it was drafted by only one party and was presented on a 'take-it-or-leave-it' basis. This is not sufficient to demonstrate procedural unconscionability."). Rather, to show procedural unconscionability, "'there must be some evidence that, in consequence of the imbalance, the party in the weaker position was defrauded or coerced into agreement to the arbitration clause.'" Stachurski v. DirecTV, Inc., 642 F. Supp. 2d 758, 768 (N.D. Ohio 2009) (quoting Hawkins v. O'Brien, 2009 WL 50616, at *4 (Ohio Ct. App.)). Plaintiff has not presented evidence of fraud or coercion here because his employment was never in jeopardy and he signed an identical agreement a year earlier.

Plaintiff next argues that the agreement was procedurally unconscionable because Cintas failed to provide him with a copy of the agreement and the AAA rules incorporated by reference therein. See Castro Decl. ¶ 6. Although this failure offers some evidence of procedural unconscionability,[5] it does not justify invalidating the arbitration agreement here. As previously noted, Plaintiff signed an identical version of the employment agreement one year earlier and signed similar versions in 2006, 2009, and 2010. All

[5] See Eagle v. Fred Martin Motor Co., 809 N.E.2d 1161, 1177-78 (Ohio Ct. App. 2004) (finding procedural unconscionability where, among other problems, the plaintiff "was not provided with a copy of the arbitration clause or contract"); Jamison v. LDA Builders, Inc., 2013 WL 2152748, at *9 (Ohio Ct. App.) (finding evidence of procedural unconscionability where one party failed to provide a copy of the arbitration agreement to the other until several months after the parties signed the agreement).

of these documents were kept in his personnel file and he could have asked to review the documents at any time during his employment. Vig Decl. ¶¶ 3-4. Simply put, Plaintiff had multiple opportunities to read the arbitration provision and to request clarification of its terms, both before and after he signed it. This minimizes the procedural unfairness associated with Cintas's failure to provide him with a copy of the agreement and distinguishes this case from those he cites in his brief. See, e.g., Chavarria v. Ralphs Grocery Co., 733 F.3d 916, 923 (9th Cir. 2013) (finding an arbitration agreement procedurally unconscionable under California law because defendant-employer failed to provide plaintiff-employee with the terms of its arbitration policy "until her employment orientation, three weeks after the policy came into effect").

In sum, the limited evidence of procedural unconscionability that Plaintiff has produced is not sufficient to preclude enforcement of the arbitration provision under Ohio law, especially in light of his failure to show that the agreement itself was substantively unconscionable. See Harrison v. Winchester Place Nursing, 996 N.E.2d 1001, 1009-10 (Ohio Ct. App. 2013) (recognizing evidence of procedural unconscionability where "arbitration agreement was 'buried' in the middle of the document and also referenced rules and procedures which were only available online" but nevertheless finding arbitration provision enforceable due to a lack of substantive unconscionability). This outcome would be the same under California law. Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev., LLC, 55 Cal. 4th 223, 247 (2012) (recognizing that substantive and procedural unconscionability

must both be present to find an arbitration agreement unconscionable).

C. PAGA Claims

Plaintiff argues that, even if his other claims must be arbitrated under the agreement, his PAGA claims cannot legally be subject to arbitration. For support, he relies on a recent line of California cases holding that employment agreements which subject an employee's PAGA claims to binding arbitration are unconscionable. See, e.g., Brown v. Ralphs Grocery Co., 197 Cal. App. 4th 489, 494 (2011) ("We also hold that the recent decision of the United States Supreme Court in [Concepcion], holding that California decisional law invalidating class action waivers in consumer arbitration agreements is preempted by the [FAA], does not apply to representative actions under the PAGA.").

These cases are inapplicable for the same reasons that all of the other California cases Plaintiff cites are inapplicable: the arbitration agreement must be construed under Ohio law, not California law. Although Plaintiff's claims against Cintas will ultimately be governed by California law, the threshold question of whether or not those claims may be lawfully subjected to binding arbitration is a question of contract law governed by Ohio law. All of the cases Plaintiff cites were decided under California's doctrine of unconscionability under a rule created by California courts. Ohio courts do not appear to follow the same rule regarding the arbitrability of private attorney general actions. See Price v. Taylor, 575 F. Supp. 2d 845, 854 (N.D. Ohio 2008) (rejecting plaintiff's argument "that the arbitration agreement is unconscionable because it limits her legal remedies,

specifically the ability to bring a class action, join in claims with others, or act as private attorney general").

Even under California law, the question of whether PAGA claims may be subjected to binding arbitration remains unsettled. Plaintiff himself acknowledges that California's lower courts are divided on whether employment agreements that subject PAGA claims to arbitration are enforceable and the California Supreme Court has recently granted a petition for review to resolve this division.[6] Iskanian v. CLS Transp. of Los Angeles LLC, 147 Cal. Rptr. 3d 324 (2012), granting review of 206 Cal. App. 4th 949 (2012). Thus, even if the arbitration agreement in this case were governed by California law, it is not clear that it would be unconscionable merely because it subjects PAGA claims to binding arbitration.

III. Scope of Arbitration Provision

Plaintiff asserts that his claims are not subject to binding arbitration because the employment agreement's arbitration provision "only pertains to the Agreement itself and not to anything outside the Agreement." Docket No. 23, Pl.'s Opp., at 4. He argues that, because his claims in this suit are not based on the agreement itself -- which, according to Plaintiff, focuses primarily on employees' non-disclosure obligations -- the claims fall outside the scope of the arbitration provision.

This interpretation of the agreement is untenable. The arbitration provision expressly states that it encompasses any dispute arising from the "Employer's violation of any provision of

[6] This Court previously acknowledged this division among lower courts, without taking a position, in Davis v. Nordstrom, Inc., 2012 WL 4478297, at *7 n.1 (N.D. Cal.).

this Agreement or any law, regulation or public policy." Sharpe Decl., Ex. A, at 5 (emphasis added). It also states that it covers the "Employee's rights or claims arising out of or in any way related to Employee's employment with Employer" as well as any "rights or claims arising under . . . state or local laws regarding employment." Id. (emphasis added). This language -- which Plaintiff fails to discuss or even acknowledge in his opposition brief -- plainly encompasses the California Labor Code and UCL claims that Plaintiff has asserted in this action. See Zeif, Civil Case No. 13-0413-JVS, Docket No. 17, at 3 (reviewing identical arbitration provision and concluding that plaintiff's California Labor Code claims and UCL claims "clearly fall within the scope of the claims the parties agreed to submit to arbitration"). Accordingly, Plaintiff's claims are subject to arbitration under the employment agreement.

CONCLUSION

For the reasons set forth above, Defendant's motion to stay (Docket No. 19) is GRANTED. This action is stayed pending arbitration, which must be diligently pursued. Nothing in this order shall be considered a dismissal or disposition of this case and, should further proceedings in this litigation become necessary or desirable, any party may move to restore the case to the Court's calendar. This order administratively terminates this action.

IT IS SO ORDERED.

Dated: 4/11/2014

CLAUDIA WILKEN
United States District Judge