Filed 10/19/26; Certified for Publication 11/12/26 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LUIS ANTONIO SALAZAR, Plaintiff and Respondent, v. CN MOTOR COMPANY LLC, Defendant and Appellant.	B344433 (Los Angeles County Super. Ct. No. 24STCV14541)

APPEAL from an order of the Superior Court of Los Angeles County, Lawrence P. Riff, Judge. Reversed with directions.

Fisher & Phillips LLP, Tyler T. Rasmussen, Kari E. Gibson and Megan E. Walker for Defendant and Appellant.

Bibiyan Law Group, David D. Bibiyan, Henry G. Glitz and Jason Rothman for Plaintiff and Respondent.

Luis Antonio Salazar (Salazar) sued his employer, appellant CN Motor Company LLC, for violations of the California Labor Code and Business & Professions Code. CN Motor moved to compel arbitration of Salazar's claims. The trial court denied the motion. CN Motor contends the parties had a valid Arbitration Agreement (Agreement) which was not revocable due to either procedural or substantive unconscionability, and that even if the court found unconscionability it could easily sever offending terms. We find the trial court erred in denying the motion to compel arbitration rather than severing the offending provisions. We reverse and remand the matter to the trial court to enter an order severing certain provisions of the agreement, grant the motion to compel as to Salazar's individual claims, and address the remaining issue of the class action waiver.

BACKGROUND

I. *Relevant Facts and Procedural History*

CN Motor Company LLC, doing business as Santa Monica Lincoln (CN Motor), is an automobile dealership engaged in marketing and selling vehicles and purchasing parts and vehicle-related supplies. On June 6, 2022 Salazar filled out an "APPLICATION FOR EMPLOYMENT" form to work at CN Motor with a handwritten start date of June 20, 2022. On June 8, 2022 Salazar signed the Agreement. On June 13, 2022 Salazar completed and signed a form entitled "PERSONAL IDENTIFICATION INFORMATION." On June 16, 2022, he completed, signed, and dated an IRS W-4 form.

The Agreement is two pages long and includes the signature block on the second page for both employee and

employer. It is entitled "APPLICANT STATEMENT AND AGREEMENT." The second line of the title reads, "IMPORTANT—READ CAREFULLY CONTAINS A BINDING ARBITRATION AGREEMENT." The two-line title is the first text on the page and is in all capital letters. The Agreement is single-spaced and typed in 11-point Times New Roman font. The font in the title and body of the Agreement appears virtually identical in size and form. The text is separated into 15 paragraphs.

Salazar challenged the Agreement as unconscionable. The contested terms, as set out below, are in different paragraphs in the Agreement. We have added italics to denote the terms to which Salazar objects and which we hold should be severed. We also added words in block parentheses, where necessary, to make sense after the deletions.

Paragraph 4 states: "I and the Company agree to use individual binding arbitration to resolve all disputes *of any nature* whether based on federal, state or local laws, and/or common law and/or equity, which arise out of or are related in any way to my seeking employment with, employment by, *or any other relationship/interaction with* the Company *and its Affiliate*s. *I must submit to binding arbitration, for example, claims for discrimination, harassment, retaliation, wrongful termination, defamation, invasion of privacy, wage and hour violations, assault and battery, tort, etc. The Company and/or Affiliates must submit to binding arbitration, for example, claims against me for embezzlement, theft of trade secrets, breach of confidentiality, breach of duty of loyalty, breach of contract, etc. Affiliates include the Company's owners, directors, officers, managers, employees, agents, partners, attorneys, sister-*

companies, subsidiaries, parent companies, joint-venturers, alleged joint-employers, affiliated persons/entities, independent contractors, and parties affiliated with its employee benefit and health plans. I and the Company/*Affiliates* waive our rights to have any claims decided in an administrative hearing, or by trial with a judge or jury in court."

Paragraph 5 sets out the exception to binding arbitration—"claims arising under the National Labor Relations Act which are brought before the National Labor Relations Board, claims for medial and disability benefits under the California Workers' Compensation Act, Employment Development Department claims, and claims for individual wages filed with the Labor Commissioner. . . . Once the agency's proceedings are finished, I must submit my claims to binding arbitration pursuant to this Agreement. Our agreement for binding arbitration is not revocable."

Paragraph 6 asserts: "The Company's business and my employment affect interstate commerce. This Agreement and my employment are governed by the Federal Arbitration Act ('FAA') and the rules listed herein, as supplemented by the California Arbitration Act ('CAA') as set forth in the Code of Civil Procedure § 1280 et seq., including § 1283.05 and all of the CAA's other mandatory and permissive rights to discovery). The CAA shall only control the arbitration proceedings to the extent it is consistent with this Agreement and/or the Federal Arbitration Act."

Paragraph 8 states: "The arbitrator only has the authority to adjudicate individual claims. The arbitrator does not have the authority to make the arbitration proceeding a class or collective action, or to award monetary relief to a group of claimants.

There shall be no consolidation or joinder of claims of other claimants, or class or collective action (collectively 'class claims'). I and the Company expressly waive the right to bring class claims. I still have the right, however, to bring a claim as a proxy for the State of California pursuant to the California Private Attorneys General Act ('PAGA') and this Agreement does not waive such right."

Paragraph 11 asserts: *"To start an arbitration claim(s), I must provide a letter outlining my claims and demand arbitration to both the General Manager and the Controller (or Business Manager) of the dealership where I am employed. I understand that my letter must be dated and physically given to both the General Manager and the Controller (or Business Manager) personally prior to the expiration of any statute of limitations that applies to my claims. The Company may similarly commence claims against you by giving a letter to you. The party bringing the claims will be required to file a formal complaint pleading the claims and causes of action relied upon after an arbitrator is selected. The arbitrator will set the timing for the responding party to file and serve any responsive pleading."*

Finally, paragraph 12 reads: "If any term or provision of this Agreement is declared void or unenforceable, it shall be severed and the remainder of this Agreement shall be enforceable. Notwithstanding the same, the prohibition on the arbitrator hearing class claims and/or collective claims shall not be severable."

Before the signature block, the Agreement reads:

> "I UNDERSTAND THAT I AM GIVING UP THE RIGHT TO TRIAL BY JURY, BY A SITTING TRIAL COURT

JUDGE AND/OR BY FINAL ADJUDICATION THROUGH AN ADMINISTRATIVE PROCESS BY AGREEING TO BINDING ARBITRATION.

"MY SIGNATURE BELOW ATTESTS TO THE FACT THAT I HAVE BEEN GIVEN AN OPPORTUNITY TO READ AND CONSIDER THIS AGREEMENT, AND THAT I HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND BY ALL OF THE ABOVE TERMS. I AGREE THAT THE COMPANY IS BINDING ITSELF TO THIS AGREEMENT BY PRESENTING THIS AGREEMENT TO ME FOR SIGNATURE.

"DO NOT SIGN UNTIL YOU HAVE READ THE ABOVE ACKNOWLEDGMENT AND AGREEMENT."

The signature block has a space for "EMPLOYEE" to sign and date, and a space for "COMPANY" to sign and date.

Salazar worked as an hourly employee for CN Motor from June 2022 to March 2024. On June 10, 2024, Salazar filed a class action complaint in Los Angeles Superior Court against CN Motor, asserting several wages and hour claims under the California Labor Code on behalf of himself and the class: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) violation of Labor Code section 227.3; and (10) unfair competition.

In response to the complaint, CN Motor filed a motion to compel arbitration based on the Agreement Salazar had signed. Salazar opposed the motion.

II. *The Trial Court's Ruling*

On December 16, 2024, the trial court denied CN Motor's motion to compel arbitration. The court ruled CN Motor had carried its burden to prove that the parties agreed to arbitrate, but the Agreement was unenforceable.

"Based on the general evidence of oppression, and the evidence of surprise in the format of the Agreement specifically, the Court concludes the Agreement was formed in circumstances of moderate-to-high procedural unconscionability." The court found Salazar "felt pressured to sign the Agreement" and that it was a contract of adhesion because " 'few employees are in a position to refuse a job because of an arbitration agreement.' " The court continued: "Based on the evidence of how Defendant generally presented papers to Plaintiff, the Court further finds that he felt increased pressure to sign by the limited time Defendant likely afforded him to review the Agreement. Lastly, the Court finds the oppression of Plaintiff was increased by the fact Defendant gave Plaintiff documents printed in English, whereafter Spanish is his preferred language. These findings sum to a moderate to high degree of oppression."

The trial court also found that the "format of the Agreement evidences a degree of surprise. Perhaps it was not drafted with the purpose of surprising the reader with its terms. But the text is small and dense; some paragraphs indeed appear as an opaque mass of fine print. That said, the fine print is bookended by warnings printed in all capital letters. The title of the Agreement reads, 'IMPORTANT—READ CAREFULLY

CONTAINS A BINDNG ARBITRATION AGREEMENT.' A similar warning appears at the bottom of the Agreement, before the signature block."

As to substantive unconscionability, the trial court noted that plaintiff had raised five reasons why the terms of the Agreement "are overly harsh and one-sided: (1) the scope, duration, and mutuality . . . ; (2) the procedure for initiating arbitration; and (3) the waiver of rights. Plaintiff also argues the Agreement is unconscionable because of two omissions. He argues it lacks (4) an exemption for sexual harassment claims and (5) arbitrator guardrails." The court agreed with Salazar that two of the five terms were unconscionable. First, the court found paragraph 4 overbroad in scope because it required arbitration of claims " 'which arise out of or are related in any way to my seeking employment with, employment by, *or any other relationship/interaction with* the Company and its affiliates.' " The court cited the Agreement's examples of arbitrable claims and noted that many did not necessarily arise from the parties' employment relationship, despite CN Motor's claims that the Agreement was limited to employment claims only.

Next, the trial court found the Agreement suffered from a "mutuality problem" in that it "requires Plaintiff to arbitrate claims he might have against Defendant ('Company') and Defendant's 'Affiliates,' defined as the following (in part): Defendant's parent companies, Defendant's sister companies , its subsidiaries, joint venturers, independent contractors, partners, attorneys, 'parties affiliated with its employee benefit and health plans,' and broadest of all, 'affiliated persons/entities.' " The court found that "The Agreement not only reaches to claims that

would have little or nothing to do with the employment relationship between Defendant and Plaintiff, but also reaches to parties whose relationship to Defendant is tenuous." "These terms create a mutually problem that is best illustrated . . . by hypothetical examples. If Plaintiff were to have a claim against a hospital for malpractice, for example, that claim might be covered by the Agreement if the hospital is 'affiliated with [Defendant's] employee benefit and health plans.' If plaintiff were to have a claim arising from his purchase of a car, the claim might be covered by the Agreement if the seller is somehow an 'affiliated entity' of Defendant."

The court also found that because the Agreement was not revocable, it was of infinite duration and therefore unconscionable.

Lastly the trial court also found that the Agreement "mandates an overly harsh procedure for initiating an arbitration proceeding" because it "lacks mutuality to a degree. Whereas the employee '*must*' give written notice to Defendant's General Manager and Controller or Business Manager, the same requirement is apparently optional for Defendant, who '*may* similarly commence claims . . . by giving a letter' to the employee." It "requires the employee to give notice to managers of 'the dealership where I am employed,' a requirement that would arguably not apply if the employee were no longer employed by the dealership."

The trial court grouped the issues of overbreadth, infinite duration and lack of mutuality re parties as one ground of one-sidedness. As a second ground, it found the lack of mutuality in initiating arbitration unconscionable. The trial court rejected

Salazar's other grounds and concluded that the "degree of substantive unconscionability is moderate."

As to severability, the trial court concluded that the Agreement was permeated with unconscionability and the issues of overbreadth, infinite duration and lack of mutuality in parties could not be cured with simple severance. "These issues go to the core of the Agreement; the type of claims that must be arbitrated, the parties who must arbitrate, and the duration the agreement remains in effect. The first two issues especially are not matters that can be severed; the Court would need to rewrite the Agreement to narrow the scope and add symmetry to the parties bound. The Court therefore decides not to sever the unconscionable terms and decides instead to not enforce the Agreement."

CN Motor's timely appeal followed.

DISCUSSION

I. *Standard of Review and Burden of Proof*

The trial court sits as the trier of fact when deciding a motion to compel arbitration, "weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972 (*Engalla*).) A party who files a motion to compel arbitration "bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." (*Ibid*.) " 'On appeal from an order denying a petition to compel arbitration, we review the trial court's factual

determinations under the substantial evidence standard, and we review the legal issues independently.' " (*Pacific Fertility Cases* (2022) 85 Cal.App.5th 887, 892; *Doe 1 v. McGrath Kavinoky LLP* (2026) 121 Cal.App.5th 488, 496; *Alvarez v. Altamed Health Services Corp*. (2021) 60 Cal.App.5th 572, 581.) Where the facts are undisputed, a trial court's final ruling on a motion to compel arbitration is reviewed de novo. (*Ibid.*) Even under a substantial evidence standard of review, "a trier of fact may not indulge in inferences rebutted by clear, positive and uncontradicted evidence." (*Fullerton Union High School Dist. v. Riles* (1983) 139 Cal.App.3d 369, 383.)

If a contractual clause is found unconscionable, the court may, under Civil Code section 1670.5, choose to do one of the following: (1) refuse to enforce the contract; (2) sever any unconscionable clause; or (3) limit the application of any clause to avoid unconscionable results. (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 513 (*Ramirez*).) The trial court's decision to act as Civil Code section 1670.5 permits is reviewed for abuse of discretion. (*Ibid.*; *Samaniego v. Empire Today, LLC* (2012) 205 Cal.App.4th 1138, 1144 (*Samaniego*).)

II. ***Applicable Law***

In ruling on a motion to compel arbitration, a trial court must first determine whether the parties actually agreed to arbitrate the dispute. General principles of California contract law guide the court in making this determination. (*Ford Motor Warranty Cases* (2024) 17 Cal.5th 1122, 1128.)

As a threshold matter, the trial court found CN Motor carried its burden as to the existence of an Arbitration Agreement between Salazar and CN Motor. Neither party challenges the ruling.

A. **Unconscionability in the Arbitration Agreement**

Both the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the California Arbitration Act (Code Civ. Proc., § 1280 et seq.) favor enforcement of valid arbitration agreements. (*Moses H. Cone Hospital v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24–25; *Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 25–26 [strong public policy in favor of arbitration].) An arbitration agreement will be enforced unless grounds for its revocation exist. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125 (*OTO*).

California law and public policy establish "a presumption in favor of arbitrability." (*Engalla*, *supra*, 15 Cal.4th at p. 971; Code Civ. Proc., § 1280 et seq.) Contract defenses like unconscionability, " ' "may be applied to invalidate arbitration agreements without contravening" the FAA' or California law." (*OTO*, *supra*, 8 Cal.5th at p. 125.) "The degree of unfairness required for unconscionability must be as rigorous and demanding for arbitration clauses as for any other contract clause." (*Ibid.*)

The general principles of unconscionability are well established. A contract is unconscionable if one of the parties lacked a " ' " 'meaningful choice' " ' " in deciding whether to agree to it and the contract contains " ' " 'terms which are unreasonably favorable to the other party.' " ' ") (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1133; *OTO*, *supra*, 8 Cal.5th at p. 125.)

" 'The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power.' " (*OTO*, *supra*,

8 Cal.5th at p. 125.) Oppression turns on " '(1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.' " (*Id.* at pp. 126–127.) Surprise would be akin to "hiding a clause [or provision] in a mass of fine print or phrasing a clause in language that is incomprehensible to a layperson." (*Penilla v. Westmont Corp.* (2016) 3 Cal.App.5th 205, 216 (*Penilla*).)

Substantive unconscionability addresses " 'the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.' " (*OTO*, *supra*, 8 Cal.5th at p. 125.) Substantive unconscionability " 'typically is found in the employment context when the arbitration agreement is "one-sided" in favor of the employer without sufficient justification.' " (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 320 (*Cook*); *Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462, 1472–1473; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 88 ["Where a party with superior bargaining power has imposed contractual terms on another, courts must carefully assess claims that one or more of these provisions are one-sided and unreasonable."].) The unconscionable terms must be " 'so one-sided as to "shock the conscience" ' " and a "contract term is not substantively unconscionable when it merely gives one side a greater benefit." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.)

Both procedural and substantive unconscionability must be present for the unconscionability defense to be established, but "they need not be present in the same degree." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.) Procedural and substantive unconscionability are evaluated on a " 'sliding scale' " where "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." (*Ibid.*)

B. **Procedural Unconscionability**

The trial court found the Agreement suffered from "moderate-to-high" procedural unconscionability, reasoning that Salazar felt pressured to sign the Arbitration Agreement because he was given the Agreement in English and had a limited time period to review and sign it. Further, the format of the Agreement "evidences a degree" of surprise.

1. **The Court's Consideration of Salazar's Declaration**

In his declaration, Salazar attested he is primarily a Spanish speaker, can understand "basic conversational English," but cannot "read and understand documents in English unless they are translated." Paragraph 2 of his declaration reads: "This Declaration was translated into Spanish for me by an interpreter before I signed it. I recited the facts contained in this Declaration in Spanish, which were translated into English, and then this Declaration was read to me in both Spanish and English before signing. I had the opportunity to review it, to make edits, and to discuss its contents with my attorneys." The final two paragraphs of the declaration provide the date and place of

execution, Salazar's signature, and his declaration under penalty of perjury.

CN Motor argues the trial court's ruling finding procedural unconscionability is flawed because it was based almost entirely on Salazar's declaration. CN Motor contends the court should not have considered the content of Salazar's declaration in the first place because Salazar dictated the facts set out in the declaration in Spanish and the document was translated or interpreted into English without an accompanying declaration, affirming the document was correctly translated or interpreted, under penalty of perjury. Salazar contends CN Motor has failed to provide authority in support of this argument.

CN Motor primarily relies on *Detrick v. Shimada* (2026) 120 Cal.App.5th 170 (*Detrick*), as instructive authority. In *Detrick*, the declaring defendant Keiko Shimada spoke Japanese only. Shimada could not directly express herself in a declaration because she could not speak or read English. (*Id.* at p. 174.) In excluding her declaration, the court of appeal explained it lacked "the necessary link providing a foundation for [the plaintiff's] declaration establishing that it is trustworthy in light of her admitted *inability to read or speak English*." (*Id.* at p. 178, italics added.) "[H]ere there was an absence of the foundational facts from which the trial court could determine whether the English-language declaration accurately reflected Shimada's words, including the name and qualifications of the interpreter and the circumstances of the declaration's creation There is not even 'assurance that these were [Shimada's] words, rather than something included at the suggestion of another person.' " (*Id.* at p. 179.)

We find CN Motor has forfeited this argument. In the trial court, CN Motor did not ask the trial court to find Salazar's declaration inadmissible or otherwise invalid based on a failure to identify the person(s) who translated or interpreted the Declaration before he signed it. It argued only that Salazar was bound by his signature whether or not he could or did read the document. CN Motor filed written evidentiary objections to the declaration based only on irrelevance and prejudice. Interestingly, CN Motor pointed out that "if Plaintiff's arguments are taken at face value, his declaration should be inadmissible as he cannot read English with ease and there is no admissible evidence that the declaration was properly translated, clearly and verbatim, so as to ensure Plaintiff knew exactly what he was executing." But it never put the question to the court whether the declaration is inadmissible. Consequently the trial court did not rule on its admissibility. CN Motor has forfeited its objections to the admissibility of the Salazar declaration.

Our conclusion is buttressed by the fact that CN Motor asked the trial court to consider a previous declaration Salazar signed in an unrelated case in which he denied wage and hour violations. That prior declaration, in CN Motor's favor, suffers from the same defect CN Motor now raises for the first time on appeal. Further, in its reply brief in the trial court, CN Motor relies on Salazar's current declaration notwithstanding its defects. CN Motors cannot have it both ways. The trial court did not err in relying on Salazar's declaration.

2. **Execution of the Arbitration Agreement**

A finding of oppression turns on " '(1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the

proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.' " (*OTO*, *supra*, 8 Cal.5th at pp. 126–127.)

The trial court found Salazar felt pressured to sign the Arbitration Agreement, because "[f]ew if any employees share equal bargaining power with their employer" and " 'few employees are in a position to refuse a job because of an arbitration agreement.' " The court found that CN Motor generally presented papers to Salazar quickly and under time pressure which afforded him little to no time review the Agreement.

The only evidence in the record to support the trial court's finding that Salazar had to act quickly and under time pressure is Salazar's declaration. Here, there is no dispute that Salazar signed a job application to work on June 6, 2022, and executed the Agreement on June 8, 2022. There is also no dispute that "start 6-20-22" is written on the top of the job application. Salazar's declaration references several documents that he executed during his hiring process, including execution of IRS Form W-4. CN Motor office manager Kemvette Cox attested that the W-4 form was executed on June 16, 2022.

We conclude the Arbitration Agreement was clearly part of the hiring process. However, no substantial evidence supports the notion that the conditions under which it was signed amount to oppression. Salazar declared that *after he was hired* he was pressured to sign other documents at the worksite, during work days and in the middle of his shift. These events took place after the execution of the Arbitration Agreement. (See *OTO*, *supra*, 8 Cal.5th at pp. 126–127 [an oppression finding requires

oppression at the time the agreement to arbitrate is executed].) We find this basis of oppression unsupported by the evidence.

3. Salazar's Choice to Execute the Arbitration Agreement in English and Not in Spanish

The trial court found that oppression was increased by the fact CN Motor gave Salazar documents printed in English, whereas Spanish is his preferred language. It concluded that these findings, together with the pressure to sign documents, "sum to a moderate to high degree of oppression."

Salazar represented that he was "provided documents at the worksite" and, despite requesting more time to review the documents, he was told that he had to complete the documents in order to work. He argues that he was not provided documents in Spanish, nor were the terms of the Agreement explained to him.

We agree with CN Motor that the trial court erred in partly basing its finding of oppression on the fact that Salazar was not given documents in his preferred language of Spanish. Salazar failed to provide any evidence that at the time he applied for the position and executed the Agreement, he informed CN Motor that he had difficulty with English and wanted to review the documents in Spanish. According to Salazar's declaration, the first time he informed his employer of his difficulty reading English occurred after he had already signed the Agreement.

Cases which find procedural unconscionability based on a lack of English skills involve a very low level of such skills. For example in *Subcontracting Concepts (CT), LLC v. De Melo* (2019) 34 Cal.App.5th 201, respondent answered a job ad and went to a warehouse where he was told he could be hired " 'on the spot' " if he signed employment documents. (*Id.* at p. 206) "Respondent needed a job and felt he had to sign the documents" even though

his native language was Portuguese and he could not understand the documents written in English. (*Ibid.*) "No one asked if he wanted the documents translated into Portuguese and no one explained the documents to him in detail in either English or Portuguese." (*Ibid.*) Similarly in *Samaniego*, the court found procedural unconscionability where employees who spoke English as a second language were required to sign an 11-page single-spaced agreement written in English, which was "riddled with complex legal terminology." (*Samaniego*, *supra*, 205 Cal.App.4th at p. 1142.) In *Penilla*, the trial court found procedural unconscionability in a contract where managers knew signatories "were not proficient in English, [and] the managers never explained the arbitration provision in Spanish or provided a Spanish-language copy of it." (*Penilla*, *supra*, 3 Cal.App.5th at p. 216.)

Here, Salazar signed the Agreement two weeks before beginning work. Moreover, Salazar did not present evidence that he asked that the Agreement be translated for him, that management knew he was not completely fluent in English when he signed it, or that he met with management or anyone at CN Motor before signing the Agreement. In his declaration, Salazar's attested that the first time he informed his employer of his difficulty reading English occurred after he had already signed the Arbitration Agreement. We find the trial court erred in finding oppression based on the presentation of the Agreement for Salazar's signature and the fact that the Agreement was in English. Substantial evidence does not support the trial court's findings.

4. **Surprise**

The trial court ruled that the "format of the Agreement evidences a degree of surprise" because it is "printed in small, densely spaced font, and contains legal jargon," and the full name of the " 'COMPANY' " does not appear anywhere in the Agreement. However, the court acknowledged that while "some paragraphs indeed appear as an opaque mass of fine print" the fine print is "bookended by warnings printed in all capital letters" both on the first page of the Agreement and on the second page just before the signature block.

CN Motor argues that there is no element of surprise in the Agreement because, as the trial court pointed out, warnings in large capital letters are "plastered" at the beginning and end of the Agreement. CN Motor also contends the "font is insufficient to demonstrate surprise, especially when [Salazar] did not testify that he was unable to read or understand the Arbitration Agreement" based on that fact.

Salazar offers no arguments on this point other than to argue that the Agreement as a whole is one of adhesion.

We find the trial court erred in finding a "degree" of surprise. As the court itself pointed out, the warnings bookended the text of the Agreement in all capital letters on the first page and just before the signature block. (See *Penilla*, *supra*, 3 Cal.App.5th at p. 216.) The 11-point font was readable; the format was neither jumbled nor dense.

Although we disagree that substantial evidence supports the trial court's findings of oppression and surprise, we do find that the Agreement, as a whole, presents a low level of procedural unconscionability based on its adhesive nature. (See *OTO*, *supra*, 8 Cal.5th at p.187 [arbitration agreements imposed

as a condition of employment are typically adhesive]; *Walnut Producers of California v. Diamond Foods, Inc.* (2010) 187 Cal.App.4th 634, 646 [" '[*A*]*bsent unusual circumstances*, use of a contract of adhesion establishes a minimal degree of procedural unconscionability' "].)

Having determined that the arbitration agreement presents a low degree of procedural unconscionability, we next consider whether the Arbitration Agreement is substantively unconscionable.

C. **Substantive Unconscionability**

We have found a low degree of procedural unconscionability due to the adhesive nature of the Agreement. Only a high degree of substantive unconscionability would render the Agreement unenforceable. (*Cook, supra*, 102 Cal.App.5th at p. 321.) Because an arbitration agreement contract's substantive fairness "must be considered in light of any procedural unconscionability," Salazar bears the burden to prove a higher degree of substantive unconscionability. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 912; *Armendariz*, *supra*, 24 Cal.4th at p. 114.)

1. **Terms in the Arbitration Agreement**

The trial court ruled that certain terms and provisions in the Agreement related to the scope, mutuality, and duration of the Agreement are substantively unconscionable. Although we disagree with the trial court's findings on duration, we agree with the trial court on overbreadth, scope and mutuality and find a high degree of unconscionability.

First, Paragraph 4 of the Agreement requires the employee to agree "to use individual binding arbitration to resolve all disputes *of any nature* whether based on federal, state, or local

laws, and/or common law and/or equity, which arise out of or are related in any way to [the employee's] seeking employment with, employment by, *or any other relationship/interaction with* the Company *and its Affiliates*." (Italics added.)

We agree with the trial court that the term "of any nature" requires Salazar to arbitrate any and all future claims against CN Motor, including those that are unrelated to his employment, thus rendering it overbroad. (*Cook*, *supra*, 102 Cal.App.5th at pp. 321–322.) Further, the terms "any other relationship/interaction with Company and its Affiliates" is equally overbroad and one-sided. The subsequent examples of claims for battery, assault, and tort compound the overbreadth because they are not necessarily related to his employment.

CN Motor argues the language of the Agreement mirrors the language in *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064 (*Little*). Not so. *Cook* describes *Little* as addressing the enforceability of an employment arbitration agreement which was "*expressly limited to claims arising from or related to employment*." (*Cook*, *supra*, 102 Cal.App.5th at p. 324, italics added.) In stark contrast, while there is language rendering arbitrable claims arising out of Salazar's employment, there are no provisions expressly limiting the Agreement to such claims. Here, by the plain language of Paragraph 4 of the Agreement, Salazar is required to arbitrate all his claims, even those unrelated to his employment with CN Motor, resulting in an overbroad scope.

Second, we agree with the trial court that the inclusion of the word "Affiliates" and the subsequent definition of the term creates a mutuality problem between parties to the Arbitration Agreement. In the Agreement, "Affiliates include the Company's

owners, directors, officers, managers, employees, agents, partners, attorneys, sister-companies, subsidiaries, parent companies, joint-ventures, alleged joint-employers, affiliated persons/entities, independent contractors, and parties affiliated with its employee benefit and health plans." The court used hypothetical examples to demonstrate the issue of mutuality and found the Agreement could govern claims having nothing to do with the employment relationship between signatories.

Third, the trial court found that the duration of the Agreement was infinite, citing the following terms from Paragraph 5 of the Agreement: "Our agreement for binding arbitration is not revocable." Here, that provision appears to modify the sentence preceding it: "Once the agency's proceedings are finished, I must submit my claims to binding arbitration pursuant to this Agreement." The term "not revocable" is included within a paragraph outlining the only limited exceptions to binding arbitration, which are certain claims before the National Labor Relations Board, medical claims, and claims before other governmental agencies. We conclude the sentence does not render the entire Agreement as to every non-agency related claim infinite in duration.

In any event, any contract without a stated time-limit or duration terminates after a reasonable time. (*Reigelsperger v. Siller* (2007) 40 Cal.4th 574, 580.) The Agreement includes neither an explicit term of duration nor an implicit provision stating that the contract shall continue until specific grounds for termination arise.

2. **Initiation of Arbitration Procedure**

The trial court found that the procedure for initiating arbitration lacked mutuality, stating "[Paragraph 11] lacks

mutuality to a degree. Whereas the employee '*must*' give written notice to [CN Motor's] General Manager and Controller or Business Manager, the same requirement is apparently optional for [Salazar], who '*may* similarly commence claims . . . by giving a letter' to the employee." The court reasoned the provision where the employee "must" provide a letter under certain terms and conditions, but where the Company "may" commence claims through a letter creates non-mutuality.

CN Motor argues the terms are "non-mutual to an extremely limited extent." Appellant relies on the " 'modicum of bilaterality' " as outlined in *Armendariz*. (*Armendariz*, *supra*, 24 Cal.4th at p. 116.)

Salazar argues the terms lack mutuality because "the procedure is both mandatory and specific for the employee, but apparently optional and non-specific for the employer."

We find the terms are one-sided in favor of CN Motors, without any justification. The language that the Company may similarly commence claims against signee by giving a letter to signee is confusing at best and evince a lack of mutuality.

While we disagree with the trial court as to issue of infinite duration, we do agree that the Agreement is overbroad in scope and lacks mutuality. Although there is only a minimal degree of procedural unconscionability, we find the substantive unconscionability high because the two issues—overbreadth and lack of mutuality—are the essence of the harsh one-sided nature of the Agreement. Specifically, these terms which subject to arbitration claims that have nothing to do with the employer or the employment relationship inferentially indicate that the employer sought to use the adhesion contract not to simplify and make more efficient potential employment-related litigation

through arbitration, but to protect itself and its affiliates from any type of damages claims, whether or not they arise from Salazar's employment, when it had the leverage to do so by way of an adhesion contract. Such tinkering with the basis of who can bring what claims against whom is indicative of an effort to impose arbitration on the non-drafting party in an inferior forum that worked to the drafting party's advantage. (See *Nelson v. Dual Diagnosis Treatment Center, Inc.* (2022) 77 Cal.App.5th 643, 666 [multiple defects indicate a purposeful attempt to impose arbitration not because of its benefits, but because it favors the drafting party].)

We find the Agreement sufficiently unconscionable that it cannot be enforced in its present form.

D. **Severability of Terms**

Paragraph 12 of the Agreement is a severability provision: "If any term or provision of this Agreement is declared void or unenforceable, it shall be severed and the remainder of this Agreement shall be enforceable."

The trial court decided to forego severing the unconscionable terms of the Agreement and instead decided not to enforce the Agreement. The court explained that if the "unconscionability [was] limited to the provision on initiating arbitration, then the provision would be easily severed and unconscionability cured," but "the issues identified in *Cook* . . . go to the core of the Agreement: the type of claims that must be arbitrated, the parties who must arbitrate, and the duration the agreement remains in effect." The court further reasoned it "would need to rewrite the Agreement to narrow the scope and add symmetry to the parties bound."

CN Motor contends the court abused its discretion when it refused to sever the offending terms and refused to follow the express severance language in the Agreement. Salazar argues in turn that even if the terms of the contract can be severed, the court should consider restriction of the contract in the interests of justice.

In determining whether to enforce an unconscionable contract, the court should consider whether its central purpose is tainted with illegality. (*Ramirez*, *supra*, 16 Cal.5th at p. 516.) If it is, the unconscionability cannot be cured, and the court should refuse to enforce the contract. Nevertheless, at this stage of the analysis, "no bright-line rule *requires* a court to refuse enforcement if a contract has more than one unconscionable term." (*Ibid*.) If the contract's central purpose is not tainted with illegality, the court should determine whether it can cure the contract's unconscionability by severing or restricting the unconscionable terms. (*Ibid.)* If the court cannot cure the unconscionability without augmenting or rewriting the contract's terms, it must "refuse to enforce the contract." (*Ibid*.) "Courts cannot 'rewrite agreements and impose terms to which neither party has agreed.' " (*Ibid*.)

We conclude the trial court's refusal to sever unconscionable provisions was in error. The court explained that the issues with the unconscionable terms "go to the core of the Agreement." We agree. However, based on the record, the few unconscionable provisions that are left appear entirely severable from the remainder of the agreement and removing them would eliminate the only instances of substantive unconscionability while still keeping the contract intact. (See *Little*, *supra*, 29 Cal.4th at p. 1075 [Severance is appropriate where offending

provisions can be easily severed while the rest of the arbitration agreement is left intact, and there is no need for contract reformation].)

In our prefatory description of the terms of the Agreement, we have italicized the problematic language to be severed and added terms in block parentheses to clarify the remaining terms. First, from Paragraph 4 we sever the terms "of any nature"; "or any other relationship/interaction with"; and "Affiliates." Removing these terms reduces the scope of arbitration between employer and employee only and leaves intact the provision which denotes as arbitrable employer-related claims. Severance of these terms ensures that the issues appropriate for arbitration in this employment-generated contract do not unfairly extend beyond the bounds of the immediate employment relationship between CN Motor and Salazar. We also remove the examples of what claims are encapsulated within the Agreement because the current description of encapsulated claims does not require that they arise from the employment relationship between Salazar and CN Motor.

Next, we sever Paragraph 11 to remove the lack of mutuality in how to initiate an arbitration under the Agreement.

Based on the record on appeal, the terms addressed above appear entirely severable from the remainder of the agreement. Striking them would remove substantive unconscionability without the necessity of rewriting the contract. We enforce the remainder of the Agreement to the extent that it applies to claims arising from and connected to Salazar's employment with CN Motor. Any other claims between these parties or between Salazar and third parties are now excluded from arbitration under this contract.

On a final note, we acknowledge that the trial court did not address Salazar's claim that the Agreement improperly includes a class action waiver. On remand, the trial court is directed to address that issue. In the meantime at this juncture, our opinion orders arbitration of only Salazar's individual claims under the amended Agreement.

DISPOSITION

The trial court's order denying CN Motor's motion to compel arbitration is reversed with directions to grant the motion to compel arbitration of Salazar's individual claims under the Agreement without the terms and conditions we have ordered severed. The trial court is also directed on remand to address Salazar's challenge to the class action waiver. No costs are awarded.

STRATTON, P. J.

I concur:

VIRAMONTES, J.

WILEY, J., Concurring.

I join in the result.

WILEY, J.

Filed 11/12/26

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LUIS ANTONIO SALAZAR, Plaintiff and Respondent, v. CN MOTOR COMPANY LLC, Defendant and Appellant.	B344433 (Los Angeles County Super. Ct. No. 24STCV14541) ORDER CERTIFYING OPINION FOR PUBLICATION [NO CHANGE IN JUDGMENT]

THE COURT:

The opinion in the above-entitled matter filed on October 19, 2026, was not certified for publication in the Official Reports. For good cause, it now appears that the opinion should be published in the Official Reports and it is so ordered.

There is no change in the judgment.

STRATTON, P. J. WILEY, J. VIRAMONTES, J.