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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

SHANNON CORBIN,

Plaintiff and Respondent,

v.

SPECIALIZED BICYCLE
COMPONENTS, INC., et al.,

Defendants and Appellants.

H037212

(Santa Clara County
Super. Ct. No. CV200948)

Defendants Specialized Bicycle Components, Inc. and its president Michael Sinyard (collectively, Specialized) appeal from the denial of their motion to compel arbitration of plaintiff Shannon Corbin’s wrongful termination action. Specialized challenges the trial court’s conclusion that the parties’ arbitration agreement is unconscionable and therefore unenforceable. Even if some provisions are flawed, Specialized argues, any unconscionability is minimal, and the offending provisions can be severed. We reverse the order.

I. Background

Specialized hired Corbin in 2005, requiring as a condition of her employment that she sign a three-page offer letter that included an arbitration provision. In full, the provision stated that “[a]ny dispute, claim, or controversy arising out of or related to your

employment with Specialized or the termination of that employment shall be resolved exclusively through final and binding arbitration. This agreement to arbitrate includes all state, federal and foreign statutory or common law claims, including but not limited to discrimination claims arising under the California Fair Employment and Housing Act [FEHA], Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act[,] or claim under [t]he California Labor Code. Any demand for arbitration must be made within one (1) year of the termination of employment, provided, however, that if a claim arose under a statute providing for a longer time to file a claim, that statute shall govern.

“All administrative costs of the arbitration, such as arbitrator and court reporting fees, shall be divided equally between Specialized and you, unless otherwise required by law. Each party shall bear its other costs of arbitration, including attorney’s fees, provided, however, that the arbitrator(s) may award attorney’s fees to the prevailing party under the provisions of any applicable law.

“You may, but are not required to, have an attorney represent you in preparation for and during the arbitration. If you decide to use an attorney, you shall be solely responsible for the payment of attorney’s fees and costs, subject to any statutory authority of the arbitrator to order reimbursement by Specialized.

“All disputes subject to arbitration under this Agreement shall be resolved pursuant to the then current Employment Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Service [JAMS], and judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The arbitration [*sic*] shall have the authority to make any award that would be made by a court, but the arbitrator shall not have the authority to amend, modify, supplement or change the terms and conditions of employment set forth in this letter or Specialized policies. The location of the arbitration shall be in Santa Clara County, California.

“You agree that if for any reason any dispute or controversy between you and Specialized arising from or related to your employment or the termination of your employment is resolved in court rather than through arbitration, then trial of that dispute will be to a judge sitting without a jury, and you specifically waive any right you may have to trial by jury of any such dispute or controversy.

“Your agreement to arbitrate and the terms of this employment letter will survive the termination of your employment with Specialized.

“You understand that you are electing to resolve any dispute, claim or controversy describe [*sic*] above, in an arbitral forum rather than a judicial forum and that you are giving up the right to a jury trial of any such dispute, claim or controversy.”

Shortly after Corbin signed the offer letter, she met with human resources administrator Ashley Hobbs to complete her “initial hire paperwork,” which included a six-page Proprietary Information and Employee Inventions Agreement (PIEIA). Hobbs told her, “[E]veryone who works here has to sign this.”

Among other things, the PIEIA required Corbin to keep Specialized’s proprietary information confidential (¶ 5), to avoid engaging in “any employment, consulting or activity” that would conflict with her obligations to Specialized (¶ 6), to return company materials if she left Specialized (¶ 8), and to disclose all inventions conceived during her employment (¶ 9). An injunctive relief provision (¶ 11) recited that it would be difficult to measure Specialized’s damages if Corbin were to breach the promises in paragraphs 5, 6, 8 and 9, that money damages would be an inadequate remedy, and that, “[a]ccordingly, Employee agrees that if Employee shall breach any provision of Paragraphs 5, 6, 8 and 9, or any of them, the Company shall be entitled, in addition to all other remedies it may have, to an injunction or other appropriate orders to restrain any such breach by Employee without showing or proving any actual damage sustained by the Company.” The PIEIA said nothing about arbitration.

Specialized eliminated Corbin's position in January 2011 and terminated her employment. She obtained a right to sue letter from the Department of Fair Employment and Housing and sued Specialized for damages and declaratory and injunctive relief. The gist of her complaint is that she was harassed, discriminated against, and wrongfully terminated because she was involved in a personal relationship with a former executive of the company whom Sinyard held "in strong disfavor." The complaint includes causes of action for employment discrimination and gender-based harassment in violation of FEHA, failure to prevent discrimination and harassment, wrongful termination in violation of public policy, tortious invasion of privacy, defamation, intentional infliction of emotional distress, and breach of the implied covenant of good faith and fair dealing. The declaratory relief cause of action alleges that the arbitration agreement was procedurally unconscionable because it was presented on a take-it-or-leave-it basis as a condition of employment. The agreement was also substantively unconscionable, Corbin alleged on information and belief, because it exposed her to fees and/or costs that she would not face in a judicial forum and contained a one-sided waiver of the right to trial by jury. Specialized's use of the PIEIA to sue certain former employees in court rather than in an arbitral forum, Corbin alleged, "reinforced" the arbitration agreement's one-sidedness. She also alleged that the unconscionable provisions rendered the arbitration agreement void, voidable, or unenforceable as against public policy under *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 (*Armendariz*), abrogated in part on another ground in *AT&T Mobility LLC. v. Concepcion* (2011) ___U.S.___, [131 S.Ct. 1740, 1746] (*Concepcion*).

Specialized moved to compel arbitration, asserting in its motion papers that the arbitration agreement expressly covered Corbin's allegations, that California favors the enforcement of arbitration agreements when there are no grounds for revoking them, and that no such grounds existed. The agreement satisfied "all five *Armendariz* requirements," Specialized asserted, because it provided for dispute resolution pursuant

to JAMS rules that were “intended to meet the *Armendariz* requirements.” A copy of the 2009 JAMS “Employment Arbitration Rules & Procedures” was attached to the supporting declaration of Specialized’s outside litigation counsel Michael Bruno, but no copy of the 2005 rules was ever provided. Copies of Corbin’s offer letter and the PIEIA were attached to the supporting declaration of Greg Pappas, Specialized’s “Chief People & Cultural Officer,” who declared that it was “Specialized’s practice to include an arbitration clause in all Offer of Employment letters sent to prospective employees.” Pappas also declared that “Specialized agrees to pay all costs and/or fees associated with the arbitration and, thereby, to act in accordance with the agreement and California law by paying all the costs of the arbitration over and above what Ms. Corbin would incur if she filed a lawsuit in a judicial forum.”

Corbin’s opposition reiterated her contention that the arbitration agreement was procedurally and substantively unconscionable. In a supporting declaration, Corbin said she had “specifically questioned Ms. Hobbs” about the arbitration agreement and the PIEIA and that Hobbs, “referring to all the hire paperwork, including the offer letter and the PIEIA, replied by stating that ‘everyone who works here has to sign this.’” Corbin also declared that “[a]t no time during the presentation and execution of the offer letter did Specialized provide a copy of the [JAMS] rules of arbitration or even direction to a source where such rules could be found.” Citing *Trivedi v. Curexo Technology Corp.* (2010) 189 Cal.App.4th 387 (*Trivedi*), Corbin argued that Specialized’s failure to give her a copy of the JAMS rules provided additional support for a finding of procedural unconscionability. Her counsel Daniel Velton explained in his supporting declaration that Specialized had filed suit against two former employees for misappropriation of trade secrets and other claims and had, in a letter to him from Bruno, “invoked” the PIEIA and “rais[ed] the prospect of crossclaims against Ms. Corbin.”

In its reply, Specialized maintained that its “unrelated lawsuit” against a competitor “with whom Specialized has no mandatory arbitration provision” was

irrelevant. That lawsuit was in court, Specialized explained, only because the defendant former employees had refused to arbitrate. The law permits employers to “carve out” exemptions from binding arbitration to protect legitimate commercial needs, Specialized noted. Asserting that the PIEIA “only encompasses claims relating to the breach of confidentiality, and allows for injunctive relief by way of court action as to those claims only,” Specialized argued that the PIEIA articulated the requisite “business need for seeking injunctive relief”—i.e., to protect “valuable, proprietary information, and to do so quickly with a standing body.” With respect to the jury waiver provision, Specialized argued that since both sides were bound by the arbitration agreement, “both sides waived the right to a jury trial.” With respect to the attorney’s fees provision, Specialized maintained that its express reference to “*provisions of the applicable law*” rendered Corbin’s argument untenable.

Specialized also disputed Corbin’s claims of procedural unconscionability, arguing that an arbitration agreement is not procedurally unconscionable simply because it is presented as a condition of employment. Corbin had “ample” time to review the agreement and “could have rejected the agreement or suggested modifications to it.” Conceding its failure to provide a copy of the JAMS rules, Specialized claimed the ease of locating them online “neutralized” that failure.

At the hearing, the trial court commented on Specialized’s failure to provide the JAMS rules, telling the parties it was “struck by the ruling[s]” in *Trivedi* and *Zullo v. Superior Court* (2011) 197 Cal.App.4th 477 (*Zullo*). “And again, one of the issues for the court [in *Zullo*] was the failure to supply the underlying rules So I’m interested in hearing what you have to say on that issue.” Argument at the hearing was not limited to the JAMS rules issue, however. Both sides emphasized that substantive as well as procedural unconscionability must be found before a court will refuse to enforce an arbitration agreement. Specialized’s counsel maintained that Corbin could not show substantive unconscionability because “[e]verything about this arbitration agreement

meets everything about *Armendariz*.” Corbin’s counsel argued that there was “plenty of substantive unconscionability” in the agreement, “largely due to the fact the employer carves out its ability to obtain court relief for intellectual property issues.” That, he urged, “coupled with the procedural unconscionability of not providing the rules,” made the agreement unenforceable.

The trial court denied the motion “in light of *Trivedi* and *Zullo*.” Specialized filed a timely notice of appeal.

II. Discussion

Specialized contends that the arbitration agreement is conscionable, while Corbin asserts that it is both substantively and procedurally unconscionable under the *Armendariz* framework. We agree with Specialized.

A. Standard for Identifying Unlawful and Unconscionable Arbitration Provisions

Armendariz is the seminal case on unlawful and unconscionable arbitration terms. In that case, two employees sued their former employer for breach of contract, tortious wrongful termination, and sexual harassment in violation of FEHA, seeking “general damages, punitive damages, injunctive relief, and the recovery of attorney fees and costs of suit.” (*Armendariz, supra*, 24 Cal.4th at p. 92.) The employer petitioned to compel arbitration, citing the “employment arbitration agreement” that both employees signed. That agreement required the employees to arbitrate, limited their remedies to back pay, and precluded “‘any other remedy, at law or in equity, including but not limited to reinstatement and/or injunctive relief.’” (*Id.* at pp. 91-92.) The trial court found that the agreement was an “‘adhesion contract’” that was unconscionable and unenforceable because it required the employees but not their employer to arbitrate and unduly limited employee remedies. (*Id.* at p. 92.) The Court of Appeal reversed, holding that the lack of mutuality was based on business realities and that the unconscionable remedies

restriction could be severed and the remainder of the contract enforced. (*Id.* at pp. 93, 121.)

The California Supreme Court granted review. The court first decided that in cases involving unwaivable statutory claims (i.e., those brought pursuant to FEHA or other statutes enacted “‘for a public reason’”), there are five “minimum requirements,” including that “the arbitration agreement . . . cannot generally require the employee to bear any *type* of expense that the employee would not be required to bear if he or she were free to bring the action in court” and that “an arbitration agreement may not limit statutorily imposed remedies such as punitive damages and attorney fees” (*Armendariz, supra*, 24 Cal.4th at pp. 91, 100, 103, 110-111.) Provisions not satisfying the five minimum requirements are contrary to public policy and “grounds for invalidating or revoking an arbitration agreement and denying a petition to compel arbitration” (*Id.* at p. 110.) The court concluded that the damages limitation was contrary to public policy and unlawful. (*Id.* at p. 104.)

The court next considered whether, with respect to all of the employees’ claims, the arbitration agreement was unconscionable. “Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. [Citation.] ‘The term [contract of adhesion] signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.’ [Citation.] If the contract is adhesive, the court must then determine whether ‘other factors are present which, under established legal rules—legislative or judicial—operate to render it [unenforceable].’ [Citation.] ‘Generally speaking, there are two judicially imposed limitations on the enforcement of adhesion contracts or provisions thereof. The first is that such a contract or provision which does not fall within the reasonable expectations of the weaker or “adhering” party will not be enforced against him. [Citations.] The second—a principle of equity applicable to all contracts generally—is that a contract or provision, even if consistent with the reasonable

expectations of the parties, will be denied enforcement if, considered in its context, it is unduly oppressive or “unconscionable.” [Citation.]” (*Armendariz, supra*, 24 Cal.4th at p. 113.)

“‘[U]nconscionability has both a “procedural” and a “substantive” element,’ the former focusing on ““oppression”” or ““surprise”” due to unequal bargaining power, the latter on ““overly harsh”” or ““one-sided”” results. [Citation.] ‘The prevailing view is that [procedural and substantive unconscionability] must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability.’ [Citation.] But they need not be present in the same degree. ‘Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves.’ [Citations.] In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.” (*Armendariz, supra*, 24 Cal.4th at p. 114.)

The court held that the agreement was procedurally and substantively unconscionable. It was procedurally unconscionable because “[i]t was imposed on employees as a condition of employment and there was no opportunity to negotiate.” (*Armendariz, supra*, 24 Cal.4th at p. 115.) “Given the lack of choice and the potential disadvantages that even a fair arbitration system can harbor for employees, we must be particularly attuned to claims that employers with superior bargaining power have imposed one-sided, substantively unconscionable terms as part of an arbitration agreement.” (*Ibid.*)

The agreement was also substantively unconscionable, since it required employees to arbitrate claims against the employer but did not require the employer to arbitrate claims against employees. The court cited with approval a Court of Appeal opinion holding an arbitration agreement substantively unconscionable because, among other

things, it “specifically excluded certain types of disputes from the scope of arbitration, including those relating to the protection of the employer’s intellectual and other property and the enforcement of a postemployment covenant not to compete,” permitting the employer to litigate such disputes in court. (*Armendariz, supra*, 24 Cal.4th at pp. 116-118, citing *Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519 (*Stirlen*)). “[A]n agreement requiring arbitration only for the claims of the weaker party but a choice of forums for the claims of the stronger party” is substantively unconscionable. (*Armendariz*, at pp. 119-120.) “[A]n arbitration agreement imposed in an adhesive context lacks basic fairness and mutuality if it requires one contracting party, but not the other, to arbitrate all claims arising out of the same transaction or occurrence or series of transactions or occurrences.” (*Id.* at p. 120.)

In the final step of its analysis, the court concluded that the agreement’s defects could not be cured by severing the unlawful and unconscionable provisions. (*Armendariz, supra*, 24 Cal.4th at p. 124.) The lack of mutuality permeating the agreement could not be cured by striking any single provision. (*Id.* at pp. 124-125.) “Rather, the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms,” which is unauthorized. (*Id.* at p. 125.) “Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced.” (*Id.* at p. 124.)

B. Application of *Armendariz* Standards to This Case

1. Standard of Review

The parties dispute which standard of review applies. Asserting that the trial court “made no factual findings of any kind,” Specialized argues for de novo review, while Corbin claims the trial court’s resolution of disputed factual issues must be left undisturbed if supported by substantial evidence.

“On appeal from the denial of a motion to compel arbitration, ‘we review the arbitration agreement de novo to determine whether it is legally enforceable, applying general principles of California contract law. [Citations.]’ [Citation.]” (*Baker v. Osborne Development Corp.* (2008) 159 Cal.App.4th 884, 892.) “Unconscionability is also a question of law for the court, although factual issues may bear on that determination. [Citations.] Thus, to the extent the trial court’s determination that the arbitration agreement was unconscionable turned on the resolution of conflicts in the evidence or on factual inferences to be drawn from the evidence, we consider the evidence in the light most favorable to the trial court’s ruling and review the trial court’s factual determinations under the substantial evidence standard. [Citation.]” (*Ibid.*) “When the trial court makes no express findings, we infer that it made every implied factual finding necessary to support its order and [we] review those implied findings for substantial evidence.” (*Chin v. Advanced Fresh Concepts Franchise Corp.* (2011) 194 Cal.App.4th 704, 708 (*Chin*)). We review the trial court’s severance ruling for abuse of discretion. (Civil Code, § 1670.5, subd. (a); *Armendariz, supra*, 24 Cal.4th at pp. 121-122.)

2. Minimum Requirements

The parties agree that Specialized’s arbitration agreement must satisfy both the lawfulness and conscionability requirements articulated in *Armendariz*. Specialized claims the agreement satisfies all five minimum requirements, arguing that “[o]ne has only to read the parties’ agreement and its selection of JAMS to see that [the agreement] was specifically designed to comply with *Armendariz*.” Corbin claims the agreement fails to comply with the requirement that it limit employee forum costs, since it “threatens employees with the imposition of half of all arbitration costs” and also authorizes the arbitrator to award attorney’s fees “to any ‘prevailing party,’ with no limitation that a defendant in a case under [FEHA] can be awarded fees only if the case is frivolous or brought in bad faith.” We agree with Specialized.

Corbin reads the provisions she challenges too broadly. Designed to encompass a variety of circumstances that might arise, the forum costs and attorney’s fees provisions each begin by stating a broad rule. Because broad rules can have exceptions, each provision then expressly subordinates its broad rule to prevailing law. Thus, the forum costs provision states that arbitration costs “shall be divided equally between [the parties], *unless otherwise required by law.*” (Italics added.) This qualifying language removes the threat that Corbin might have to pay half the arbitration forum costs, since the law clearly requires “otherwise” in cases brought by employees seeking to vindicate their public rights. (*Armendariz, supra*, 24 Cal.4th at pp. 110-111; *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1079-1081 [extending *Armendariz* requirements to unwaivable common law claims].) Specialized conceded this point below when Pappas confirmed in his sworn declaration that the company would “act in accordance with the agreement and California law by paying all the costs of the arbitration over and above what Ms. Corbin would incur if she filed a lawsuit in a judicial forum.”

Similar qualifying language removes any threat that Corbin might be ordered to pay prevailing party attorney’s fees under a different standard than a court would apply. The agreement states that attorney’s fees may be awarded to the prevailing party “*under the provisions of any applicable law.*” (Italics added.) In FEHA cases, the applicable law is that a prevailing plaintiff may ordinarily recover attorney’s fees unless special circumstances would render the award unjust, but a prevailing defendant may recover them only if the plaintiff’s action was frivolous, unreasonable, without foundation, or brought in bad faith. (Gov. Code, § 12965, subd. (b); see *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 985.) The qualifying language thus keeps the attorney’s fees provision from running afoul of *Armendariz*’s minimum requirement that “the arbitration agreement . . . cannot generally require the employee to bear any *type* of expense that the employee would not be required to bear if he or she were free to bring the action in

court.” (*Armendariz, supra*, 24 Cal.4th at pp. 110-111.) The challenged forum costs and attorney’s fees provisions satisfy *Armendariz*’s minimum requirements.

The cases Corbin cites do not change our conclusion. All are easily distinguished because the provisions held unlawful in those cases lacked the qualifying language the agreement here contains. (*Armendariz, supra*, 24 Cal.4th at pp. 103-104 [“all-encompassing” limitation of remedies included limitation on employees’ recovery of prevailing party attorney’s fees]; *Martinez v. Master Protection Corp.* (2004) 118 Cal.App.4th 107, 115 (*Martinez*) [agreement that “require[d] parties to split the cost of the arbitration and to post fees in advance of the hearing” unlawful]; *Trivedi, supra*, 189 Cal.App.4th at pp. 394-395 [“In contrast to case law under FEHA, the agreement d[id] not limit [the employer’s] right to recover to instances where [the employee’s] claims are found to be ‘frivolous, unreasonable, without foundation, or brought in bad faith’”]; *Wherry v. Award, Inc.* (2011) 192 Cal.App.4th 1242, 1249 [“the agreements provide that the prevailing party is entitled to attorney fees, without any limitation for a frivolous action or one brought in bad faith”]; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 180 (*Mercuro*) [agreement required employee “to pay half the arbitrator’s fee”].)

Since Corbin does not raise any other minimum requirement concerns, we conclude that that the arbitration agreement is lawful under the *Armendariz* framework. But that does not end our analysis, as we must also determine whether the agreement is unconscionable.

3. Substantive Unconscionability

Disputing Corbin’s contention that the arbitration agreement is substantively unconscionable, Specialized asserts that “[t]he trial court did not rule that any substantive unconscionability existed.” “Since both types of unconscionability must exist to deny enforcement of a contract, this . . . was error.”

Specialized cannot rely on the trial court’s failure to make an express finding of substantive unconscionability. (*Chin, supra*, 194 Cal.App.4th at p. 708.) Here, both

parties thoroughly briefed and argued the issue of substantive unconscionability in the trial court. At the hearing, Corbin’s counsel cited numerous cases holding arbitration agreements substantively unconscionable for lack of mutuality. The trial court focused on *Trivedi* and *Zullo*, both of which found substantive unconscionability on the same grounds asserted here. (*Zullo, supra*, 197 Cal.App.4th at p. 486 [agreement requiring employees but not employer to arbitrate all claims lacked mutuality and was substantively unconscionable]; *Trivedi, supra*, 189 Cal.App.4th at p. 397 [agreement allowing the parties access to the courts only for injunctive relief lacked mutuality and was substantively unconscionable for “favor[ing] [the employer], because it is ‘more likely that . . . the employer would seek injunctive relief.’”].) On this record, a finding of substantive unconscionability is implicit in the order denying Specialized’s motion to compel arbitration. (*Chin*, at p. 708.)

Specialized contends that the arbitration agreement is mutual because it requires both parties to arbitrate “any dispute, claim, or controversy” arising out of Corbin’s employment, and therefore, “[e]ach party gives up the opportunity to have its claims determined by a jury.” Corbin disagrees, arguing that the agreement requires her to arbitrate all of her claims, while paragraph 11 of the PIEIA entitles Specialized to challenge employee violations of that agreement in court. Specialized labels Corbin’s resort to “another agreement” (i.e., the PIEIA) “a red herring.” We reject that characterization at the outset.

Civil Code section 1642 provides that “[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially the same transaction, are to be taken together.” (Civ. Code, § 1642; *People v. Ganahl Lumber Co.* (1938) 10 Cal.2d 501, 507 (*Ganahl Lumber*)). The documents need not have been executed contemporaneously (*ibid.*; *Lynch v. Bank of America* (1934) 2 Cal.App.2d 214, 223), and it is “unnecessary for either instrument to refer to the other.” (*Cadigan v. American Trust Co.* (1955) 131 Cal.App.2d 780, 786-787; *Spotton v. Dyer* (1919) 42

Cal.App. 585, 588.) “Whether Civil Code section 1642 applies in a particular case is a question of fact for resolution by the trial court,” and we will uphold the trial court’s finding if supported by substantial evidence. (*Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1675 (*Brookwood*).)

Here, substantial evidence supported the trial court’s implicit finding that Civil Code section 1642 applied. Corbin’s offer letter and the PIEIA both relate to the same matter—the terms of her employment by the company. Each contract binds the same parties—Corbin and the company. Since Corbin was required to sign both contracts as part of her “initial hire paperwork,” it is apparent that they were made as part of the same transaction. Thus, the two are appropriately considered together. (*Brookwood, supra*, 45 Cal.App.4th at pp. 1675-1676 [concluding that several contracts “should be taken as one” and that the arbitration requirement therefore “ran between plaintiff and Bank notwithstanding there was no specific arbitration provision in the employment agreement”].)

Disputing Specialized’s assertion of mutuality, Corbin argues that the “undeniable effect” of the PIEIA’s “court access carveout” in paragraph 11 is to exempt from mandatory arbitration those claims most likely to be brought by employers—an effect that renders the arbitration agreement substantively unconscionable.¹ We disagree.

We are not convinced that the PIEIA carves out a *court* remedy for Specialized. In interpreting a contract, a reviewing court applies the following rules. “A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ. Code, § 1636.)

¹ A “carve-out” provision excepts certain claims from the arbitration requirement. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 664, fn. 3 & 665 (*Abramson*).) Such provisions are not substantively unconscionable if they are reasonably justified by “‘business realities’” (*Armendariz, supra*, 24 Cal.4th at pp. 117, 120-121.)

“The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” (Civ. Code, § 1638.) “When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible” (Civ. Code, § 1639.)

Paragraph 11 is captioned “Injunction.” In full, it provides that “[e]mployee agrees that it would be difficult to measure damage to the Company from any breach of Employee of the promises set forth in Paragraphs 5, 6, 8 and 9 herein, and that injury to the Company from any such breach would be impossible to be calculated, and that money damages would therefore be an inadequate remedy for any such breach. Accordingly, Employee agrees that if Employee shall breach any provision of Paragraphs 5, 6, 8 and 9, or any of them, the Company shall be entitled, in addition to all other remedies it may have, to an injunction or other appropriate orders to restrain any such breach by Employee without showing or proving any actual damage sustained by the Company.”

By its plain terms, paragraph 11 permits Specialized to obtain injunctive relief, without having to prove actual damage, in certain circumstances involving intellectual property. But it says nothing about where Specialized may seek such relief. There is no language in paragraph 11 (or anywhere else in the PIEIA) that says Specialized may seek such relief in court as opposed to in an arbitral forum. Corbin’s argument is thus one of negative implication—that by failing to expressly preclude Specialized from seeking injunctive and other relief in court, paragraph 11 must affirmatively permit it to do so.

As the *Armendariz* court observed, a lack of mutuality “can be manifested as much by what the agreement does not provide as by what it does.” (*Armendariz, supra*, 24 Cal.4th at p. 120.) But that does not help Corbin here, where the PIEIA and the offer letter must be considered together. (Civ. Code, § 1642.) Here, as Specialized acknowledges, the arbitration agreement in the offer letter requires *both sides* to arbitrate “[a]ny dispute, claim, or controversy arising out of or related to [Corbin’s] employment.” In our view, the scope of the arbitration clause is broad enough to cover any breach by

Corbin of the promises in the PIEIA. It follows that Specialized must seek the remedies described in paragraph 11 in the arbitral forum. (*Brookwood, supra*, 45 Cal.App.4th at pp. 1675-1676.) Of course, if a particular claim for breach of a promise in the PIEIA fell outside the scope of the arbitration clause, then neither side would be required to arbitrate that claim. (See *RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1521.)

We discern no impediment to Specialized seeking such relief in an arbitral forum rather than in court. “[I]t is well-settled [that] arbitrators commonly provide equitable relief as part of their decision. [Citation.] In particular, an arbitrator may award permanent injunctive relief” (*O’Hare v. Municipal Resource Consultants* (2003) 107 Cal.App.4th 267, 278.) The arbitration agreement here, moreover, expressly vests the arbitrator (with one exception not relevant to this case) with “the authority to make any award that would be made by a court.” We reject Corbin’s contention that paragraph 11 of the PIEIA renders the parties’ agreement to arbitrate substantively unconscionable.

The cases she relies on do not change our conclusion. In each of them, unlike in this case, the challenged carve-out language clearly and unambiguously reserved court access for the stronger party while requiring the weaker party to arbitrate its claims. In *Abramson*, for example, the agreement stated that “this arbitration provision shall not preclude *the Company* from seeking injunctive relief *from any court having jurisdiction* with respect to any disputes or claims relating to or arising out of the misuse or appropriation of the Company's trade secrets or confidential and proprietary information.” (*Abramson, supra*, 115 Cal.App.4th at p. 664, fn. 3, italics added.) In *Stirlen*, the agreement stated that “[a]ny action *initiated by the Company* seeking specific performance or injunctive or other equitable relief in connection with any breach or violation of [provisions relating to confidential and proprietary information] *may be maintained in any federal or state court* having jurisdiction” (*Stirlen, supra*, 51

Cal.App.4th at p. 1528, italics added.) The remaining cases Corbin relies on are similarly inapposite.²

Corbin contends that the arbitration agreement lacks mutuality for another reason—because Specialized has “unilaterally shortened the statute of limitations on a number of common law claims” Specialized counters that the provision is bilateral. We agree with Specialized.

The relevant contract language here is clear and explicit, stating that “[a]ny demand for arbitration must be made within one (1) year of the termination of employment, provided, however, that if a claim arose under a statute providing for a longer time to file a claim, that statute shall govern.” “Any” means “one, no matter which, of more than two.” (Webster’s New World Dict. (4th college ed. 1999) p. 64.) The reference to “[a]ny demand” plainly encompasses a demand by either Specialized or Corbin. The provision Corbin challenges is bilateral.

To the extent Corbin suggests that even a bilateral shortened limitations period for common law claims is substantively unconscionable, we reject the contention. Parties to a contract may, as a general rule, stipulate to shorter limitations periods. (*Beeson v.*

² In *Martinez*, “[t]he arbitration agreement specifically exclude[d] . . . any ‘claims by the Company for injunctive and/or other equitable relief for unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information, *as to which . . . the Company may seek and obtain relief from a court of competent jurisdiction.*’” (*Martinez, supra*, 118 Cal.App.4th at p. 111, fn. 1, italics added.) The agreement in *Mercuro* “specifically exclude[d] ‘claims for injunctive and/or other equitable relief for intellectual property violations, unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information’” (*Mercuro, supra*, 96 Cal.App.4th at pp. 175-176.) A “bright line exception” in *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702 provided that the employer need not arbitrate certain categories of claims. (*Id.* at pp. 709, 726.) In *Higgins v. Superior Court* (2006) 140 Cal.App.4th 1238, the “‘the parties’ agree[d] that, notwithstanding the arbitration provision, *the producer* ha[d] the right to seek injunctive or other equitable relief *in a court of law* as provided for in Code of Civil Procedure section 1281.1 or other relevant laws.” (*Id.* at p. 1253, italics added.)

Schloss (1920) 183 Cal. 618, 622.) Such a stipulation “violates no principle of public policy, provided the period fixed be not so unreasonable as to show imposition or undue advantage in some way.” (*Ibid.*; see *Soltani v. Western & Southern Life Insurance Co.* (9th Cir. 2001) 258 F.3d 1038, 1045 [six-month limitations period for actions “relating to” insurance agents’ employment agreements held not substantively unconscionable].)

The cases Corbin relies on are factually distinguishable. In *Stirlen, Martinez, Ingle v. Circuit City Stores, Inc.* (9th Cir. 2003) 328 F.3d 1165, *Pokorny v. Quixtar, Inc.* (9th Cir. 2010) 601 F.3d 987, and *Davis v. O’Melveny & Myers* (9th Cir. 2007) 485 F.3d 1066, overruled on another ground in *Kilgore v. KeyBank* (9th Cir. 2012) 673 F.3d 947, the one-sided shortened limitations periods held substantively unconscionable applied not only to common law claims but also to statutory claims. “Where . . . arbitration provisions undermine statutory protections, courts have readily found unconscionability.” (*Samaniego v. Empire Today, LLC* (2012) 205 Cal.App.4th 1138, 1147; *Armendariz, supra*, 24 Cal.4th at p. 101.) The shortened limitations period here does not apply to statutory claims, as Corbin herself acknowledges.

We conclude that the arbitration agreement is not substantively unconscionable. Consequently, we need not address whether it is procedurally unconscionable or whether the trial court should have severed the provisions Corbin challenges. (*Crippen v. Central Valley RV Outlet* (2004) 124 Cal.App.4th 1159, 1167.) Even if some degree of procedural unconscionability exists, that alone is not enough to render the arbitration agreement unenforceable. (*Armendariz, supra*, 24 Cal.4th at p. 114.) The agreement here is enforceable, and the trial court erred in concluding otherwise.³

³ Our conclusion that the agreement is enforceable makes it unnecessary for us to address Specialized’s suggestion that *Concepcion* somehow limits the application of ordinary contract defenses, such as unconscionability, to arbitration agreements. It does not. The *Concepcion* court expressly reaffirmed that the Federal Arbitration Act “permits agreements to arbitrate to be invalidated by ‘generally applicable contract defenses, such as . . . unconscionability.’” (*Concepcion, supra*, __ U.S. at p. __ [131 S.Ct. at p. 1746].)

C. Arbitrability of Corbin's Claims Against Sinyard

Corbin contends for the first time on appeal that her claims against Sinyard are not subject to arbitration because he is not a signatory to the arbitration agreement. She does not argue that those claims are outside the arbitration agreement's broad scope.

Assuming that she has not forfeited her non-signatory contention by failing to raise it below, we reject it. (*Mastick v. TD Ameritrade, Inc.* (2012) 209 Cal.App.4th 1258, 1266.)

Generally, "only a party to an arbitration agreement is bound by or may enforce the agreement." (*Thomas v. Westlake* (2012) 204 Cal.App.4th 605, 613, fn. omitted (*Westlake*); Code Civ. Proc., § 1281.2.) But "[t]here are . . . 'exceptions to the general rule that a nonsignatory . . . cannot invoke an agreement to arbitrate' [Citation.] One such exception provides that when a plaintiff alleges a defendant acted as an agent of a party to an arbitration agreement, the defendant may enforce the agreement even though the defendant is not a party thereto. [Citations.]" (*Westlake*, at p. 614; *Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, 418 (*Dryer*)). "[A] plaintiff's allegations of an agency relationship among defendants is sufficient to allow the alleged agents to invoke the benefit of an arbitration agreement executed by their principal even though the agents are not parties to the agreement." (*Westlake*, at pp. 614-615.) "[I]t would be unfair to [the] defendants to allow [the plaintiff] to invoke agency principles when it is to his advantage to do so, but to disavow those same principles when it is not." (*Id.* at p. 615.)

Here, the complaint names Specialized Bicycle Components, Inc., Sinyard, and Does 1-50 as defendants. It alleges that Sinyard "was employed as President of SPECIALIZED BICYCLE COMPONENTS, INC." and that he was Corbin's supervisor. It further alleges that "at all relevant times herein, all defendants and DOES 1-50 were the agents, employees, and/or joint ventures of, or working in concert with the other defendants, and were acting within the course and scope of such agency, employment, joint venture and/or concerted activity. To the extent that said conduct and/or omissions

were perpetrated by defendants and their agents, the other defendants confirmed and ratified said conduct and/or omissions.” “Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each other defendant acting individually, jointly and severally.” These allegations were specifically re-alleged and incorporated by reference into each of Corbin’s nine causes of action, which frequently and repeatedly refer to undifferentiated acts and conduct “by SPECIALIZED, MICHAEL SINYARD and DOES 1-50 inclusive.” Given the strong allegations of agency in Corbin’s complaint, the fact that Sinyard is not a signatory to the arbitration agreement does not preclude him from invoking it. (*Westlake, supra*, 204 Cal.App.4th at pp. 614-615; *Dryer, supra*, 40 Cal.3d at p. 418 [“If, as the complaint alleges, the individual defendants, though not signatories, were acting as agents for the Rams, then they are entitled to the benefit of the arbitration provisions.”].)

III. Disposition

The July 22, 2011 order denying Specialized's motion to compel arbitration is reversed, and the matter is remanded with instructions to enter a new order granting the motion.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Duffy, J.*

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.