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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRELL PILANT,

Plaintiff,

v.

CAESARS ENTERPRISE SERVICES, LLC, a limited liability corporation; CAESARS ENTERTAINMENT, INC., a corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No. 3:20-CV-2043-CAB-AHG
District Judge: Hon. Cathy Ann Bencivengo
Mag. Judge: Hon. Allison H. Goddard

Action Date: August 31, 2020

Case No. 3:20-CV-2043-CAB-AHG
District Judge: Hon. Cathy Ann Bencivengo
Mag. Judge: Hon. Allison H. Goddard

Action Date: August 31, 2020

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT, CAESARS ENTERPRISE SERVICES, LLC, TO COMPEL BINDING ARBITRATION FOR STAY OF THE PROCEEDINGS PENDING ARBITRATION

ACCOMPANYING DOCUMENTS:
NOTICE OF MOTION AND MOTION; DECLARATION OF MARIA C. ROBERTS; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER

Date: May 12, 2021
Courtroom: 15-A

PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT

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I.

INTRODUCTION

In the fall of 2016, Plaintiff DARRELL PILANT was offered the job of Senior Vice President and General Manager of the Rincon Casino in southern California. On September 6, 2016, PILANT executed an Employment Agreement with Defendant Caesars Enterprise Services for that job. Under that Employment Agreement, he was paid a base salary of $315,000 per year, with the opportunity for substantial additional bonuses. The Employment Agreement contained an arbitration clause, whereby PILANT agreed that "any dispute" arising from the agreement and his employment was subject to arbitration with the AAA.

In March of 2020, PILANT quit his job at the casino. Ignoring the binding and enforceable arbitration clause in his Employment Agreement, on August 31, 2020, PILANT filed suit against Defendants Caesars Enterprise Services, LLC ("CES") and Caesars Entertainment, Inc. ("CEI")[1], whereby he specifically alleged claims for breach of the September 6, 2016 Employment Agreement, as well as other claims based on California law. (Dkt. 1-5.) Defendants removed that suit to this Court and immediately sought dismissal of the same, which this Court denied.

The arbitration clause in PILANT's Employment Agreement is valid and enforceable. Therefore, Defendant CES hereby respectfully requests that this Court enter an Order compelling arbitration of Plaintiff's dispute and staying the present action pending such arbitration. Efforts to resolve this issue informally failed, as PILANT's attorney advised defense counsel his client will not agree to proceed to arbitration. (Roberts Decl., ¶3.)

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[1] On December 1, 2020, the Court dismissed CEI from this lawsuit for lack of personal jurisdiction. (Dkt. 6.)

II.

STATEMENT OF FACTS

1. On September 6, 2016, PILANT entered into an Employment Agreement for the position of Senior Vice President and General Manager of Harrah's Resort Southern California, a casino owned and operated by the Rincon Band of Luiseno Indians ("Rincon Band"). (Dkt. 3-2, ¶¶3-4; Dkt. 4-6, ¶4; Dkt. 4-7, §2(a).)

2. Pursuant to section 15 of the Employment Agreement, entitled "Resolution of Disputes," PILANT agreed to resolve and all disputes arising out of his employment and/or termination of employment under the Agreement through binding arbitration held before the American Arbitration Association. (Dkt. 4-6, ¶4; Dkt. 4-7, ¶15.) In that regard, the Employment Agreement states:

- Any dispute arising in connection with the validity, interpretation, enforcement, or breach of this Agreement or ***arising out of [PILANT's] employment or termination of employment with the Company*** under any statute, regulation, ordinance, or the common law ***shall be submitted to binding arbitration*** before the American Arbitration Association (AAA") for resolution.

- The arbitration shall be conducted in accordance with the AAA's employment Arbitration Rules, as modified by the terms set forth in this Agreement.

- The arbitration will be conducted by a single AAA arbitrator, experienced in arbitrating employment disputes.

- The Company will pay the fees and costs of the arbitrator and/or the AAA, except that PILANT will be responsible for paying the applicable filing fee not to exceed the fee he would otherwise pay to file a lawsuit asserting the same claim in court.

- The arbitrator shall not have the authority to modify the terms of the Employment Agreement except to the extent that it violates any governing statue, in which case the arbitrator may modify it solely as necessary to not conflict with such statute.

- The arbitrator shall have the authority to award any remedy or relief available in a court of law.

- The arbitrator shall render an award and written opinion which shall set forth the factual and legal basis for the award.
- The arbitration award is final and binding and judgment on the award may be confirmed and entered in state or federal court.
- The parties waived their respective rights to a trial by jury.
- The Employment Agreement contains the following acknowledgment:

  "[PILANT] ACKNOWLEDGES THAT [HE] HAS CAREFULLY READ THIS SECTION 15, VOLUNTARILY AGREES TO ARBITRATE ALL DISPUTES, AND HAS HAD THE OPPORTUNITY TO REVIEW THE PROVISIONS OF SECTION 15 WITH ANY ADVISORS AS [HE] CONSIDERED NECESSARY. BY SIGNING BELOW, [PILANT] SIGNIFIES [HIS] UNDERSTANDING AND AGREEMENT TO SECTION 15."

(Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

3. The AAA Employment Arbitration Rules provide in pertinent part:

- Arbitration can be initiated by either side submitting a request for arbitration.
- The filing fee is $200 for an employee (which is less than what is required to file a civil proceeding in court) and $1500 for the employer.
- Mediation can be initiated before an arbitrator is appointed.
- There is no additional filing fee for initiating a mediation.
- An arbitration Case Management Conference is scheduled no later than 60 days after selection of the arbitrator, at which counsel must be prepared to discuss:
  - issues to be arbitrated,
  - scheduling and duration of the arbitration hearing,
  - resolution of outstanding discovery disputes,
  - law/rules of evidence to be applied,
  - exchange of stipulations regarding facts/exhibits/witnesses,
  - names of witnesses and scope of testimony,
  - bifurcation of liability and damages,
  - form of the arbitration decision, and/or
  - submission of documentary evidence at the hearing.
- Discovery: The arbitrator can order depositions, interrogatories, document production requests, etc. as necessary ***for the full and fair exploration of the issues in dispute***, consistent with the expedited nature of arbitration.

- The burden of proof at arbitration is the same as in a court of law.
- The arbitrator may subpoena witnesses.
- The arbitrator shall Decision/Award to be issued within 30 days from the date of closing of the hearing.
    - "award issued under these rules shall be publicly available, on a cost basis."

(RJN, Exh. 1, pp. 11-23.)

5. The Employment Agreement also provides the arbitrator is to apply the laws of the State of Nevada. (Dkt. 4-6, ¶4; Dkt. 4-7, §§15, 17(h).)

6. On August 31, 2020, PILANT filed this action in San Diego Superior Court, Case No. 37-2020-00030556-CU-WT-CTL. It was later removed it to district court. (Dkt. 1-5.)

7. In his Complaint, PILANT alleges four causes of action: (1) wrongful termination in violation of public policy; (2) violation of Labor Code §6310; (3), violation of Labor Code §1102.5, and; (4) breach of written employment agreement. (Dkt. 1-5.)

8. In the fourth cause of action, PILANT specifically alleges a breach of "the written employment agreement originally 6 dated September 6, 2016 (the "Employment Agreement")." (Dkt. 1-5, ¶52.)

9. All four of the causes of action pled by PILANT in his Complaint ***"aris[e] out of [PILANT's] employment or termination of employment . . .,"*** and necessarily must be submitted to binding arbitration under the express terms of the Employment Agreement. (Dkt. 1-5; Dkt. 4-6, ¶4; Dkt. 4-7, §15, [emphasis added].)

10. On December 28, 2020, counsel for CES communicated with PILANT's attorney about PILANT's agreement to arbitrate his claims and advised of CES' intent to move to compel arbitration if PILANT did not voluntarily agree to arbitrate his claims. PILANT's attorney confirmed that he would not agree to submit PILANT's claims to binding arbitration. (Roberts Decl., ¶3.)

III.

LEGAL AUTHORITY

CES analyzes below the enforceability of the arbitration provision in the Employment Agreement under federal, Nevada and California law.

A. Legal Standard Under the Federal Arbitration Act and Nevada Law.

The Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "FAA") "was enacted in 1925 in response to widespread judicial hostility to arbitration agreements," *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011), and "reflects an 'emphatic federal policy' in favor of arbitration," *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 932 (9th Cir. 2013) (quoting *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012)).

Under the FAA, "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc*., 2019 WL 122164, at *3, 139 S.Ct. 524 (Jan. 8, 2019). The FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. §2. The FAA "leaves no place for the exercise of discretion by a district court," but mandates district courts to direct parties to arbitration on issues as to which an arbitration agreement has been signed. *Dean Witter Reynolds Inc. v. Byrd,* 470 U.S. 213, 218 (1985) (*emphasis* in original).

On a motion to compel arbitration, the court may not review the merits of the action but must limit its inquiry to "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Kilgore v. KeyBank Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (en banc) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). If both requirements are satisfied, the court must enforce the arbitration agreement in accordance with its precise terms. *See Concepcion*, 563 U.S. at 344 ("The overarching purpose of the FAA . . . is to ensure the enforcement of

arbitration agreements according to their terms . . . ."). "[T]he FAA requires courts to honor parties' expectations." *Id*. at 351.

Based on the strong policy favoring arbitration, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24-25 (1983). "Thus, as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." *Mitsubishi Motors*, *supra*, 473 U.S. at 626.

B. Legal Standard Under Nevada Law.

As with the FAA, Nevada courts also resolve the arbitrability of the subject matter of a dispute in favor of arbitration." *Truck Ins. Exchange v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 633, 189 P.3d 656, 659 (2008). Nevada also has a strong public policy that favors the enforcement of arbitration provisions. *Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 720, 359 P.3d 113, 118 (2015). "[A]rbitration clauses are to be construed liberally in favor of arbitration." *Kindred v. Second Judicial Dist. Court ex rel. County of Washoe*, 116 Nev. 405, 411, 996 P.2d 903, 907 (Nev. 2000).)

C. Legal Standard for Arbitration under California Law.

California law not only favors arbitration but mandates it in this case. *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 97 (2000) ("California law, like federal law, favors enforcement of valid arbitration agreements."). The California Arbitration Act ("CAA") codified in Code of Civil Procedure §1281, *et seq*., ***requires courts to order parties to arbitrate*** when an arbitration agreement exists, unless it finds: (a) arbitration was waived by the moving party, (b) grounds for rescission, or (c) a party to the agreement is a party to an action with a third party and there is a possibility of conflicting rulings on common issues of law or fact. Code Civ. Proc. §1281.2.

In California, the party moving to compel arbitration meets its burden by "proving the existence of a valid arbitration agreement by the preponderance of the evidence…" *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal.4th 951, 972 (1997); *Avery v. Integrated Healthcare Holdings, Inc*., 218 Cal.App.4th 50, 59 (2013). Upon meeting that burden, the burden shifts to the opposing party to prove a valid ground for denial of the motion. *Rosenthal, supra,* 14 Cal.4th at 413.

IV.

LEGAL ARGUMENT

As stated above, the district court's role under the FAA is "limited to determining: (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Chiron v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). Each of these issues are addressed below.

A. PILANT Entered Into a Valid and Enforceable Arbitration Agreement.

In determining whether a valid agreement to arbitrate exists, two issues arise: (1) whether the agreement to arbitrate was formed, and (2) whether the agreement is enforceable.

1. The Agreement to Arbitrate Employment Disputes was Formed When PILANT Entered into the Employment Agreement.

When analyzing whether parties agreed to arbitrate a certain matter, courts apply ordinary state-law principles governing the formation of contracts. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). To the extent PILANT argues California law (instead of Nevada law) applies to the question of whether he assented to the arbitration provision in the Employment Agreement, California law and the evidence before the court prove an agreement to arbitrate was formed. Indeed, contract formation requires free, mutual consent communicated by each party to the other. Cal. Civ. Code §1565. "Consent can be communicated with effect, only by some act or omission of the party contracting,

by which he intends to communicate it, or which necessarily tends to such communication." *Id.*, §1581.

Here, there is no dispute that PILANT and CES entered into a written Employment Agreement. There is also no dispute that Section 15 of the Agreement provides, in clear and conspicuous ALL CAPS font, that PILANT acknowledges he has carefully read Section 15, has had the opportunity to review the provisions of Section 15 with any advisors, voluntarily agrees to arbitrate all disputes, and by signing below, signified his understanding and agreement to Section 15:

> [PILANT] ACKNOWLEDGES THAT [HE] HAS CAREFULLY READ THIS SECTION 15, VOLUNTARILY AGREES TO ARBITRATE ALL DISPUTES, AND HAS HAD THE OPPORTUNITY TO REVIEW THE PROVISIONS OF SECTION 15 WITH ANY ADVISORS AS [PILANT] CONSIDERED NECESSARY. BY SIGNING BELOW, [HE] SIGNIFIES [HIS] UNDERSTANDING AND AGREEMENT TO SECTION 15.

(Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

There is also no dispute that PILANT accepted payment of his salary under the terms of the Employment Agreement and has even sued to enforce terms of the Employment Agreement. (Dkt. 1-5.)

Thus, there is no evidence whatsoever to show any dispute that PILANT received the Employment Agreement, signed the Employment Agreement, understood that employment disputes were subject to binding arbitration, and that both CES and PILANT performed under the terms of the Employment Agreement for 4 years until PILANT voluntarily resigned his position with CES. PILANT is a sophisticated and experienced executive. His job was to manage an entire resort and casino. (Dkt. 4-6, ¶4; Dkt. 4-7.) There is no question that someone of PILANT's knowledge and professional experience understands what it means to agree to an arbitration clause in an employment agreement under which he was paid hundreds of thousands of dollars per year. In light of the foregoing, there is no question that PILANT assented to the arbitration agreement in Section 15 of the Employment Agreement. *See*, e.g., *Guerrero v. Equifax Credit Info. Servs., Inc.*, CV 11-6555

PSG PLAX, 2012 WL 7683512 (C.D. Cal. Feb. 24, 2012); *Cayanan v. Citi Holdings, Inc.*, 12-CV-1476-MMA JMA, 2013WL784662, at *12 (S.D. Cal. Mar. 1, 2013) ("The Court concludes that Baker assented to arbitration when she continued to use her account after receiving change-of-terms notices and failed to opt out of the changed terms."); *Ackerberg v. Citicorp USA, Inc.,* 898 F.Supp.2d 1172, 1176 (N.D. Cal. 2012) (". . . Courts have found that continued use of an account after the issuer provides a change in terms, including an arbitration agreement, evidences the cardholder's acceptance of those terms."). It is, thus, beyond dispute that there is a written agreement between the parties that contains an agreement to arbitrate any dispute relating to the agreement and PILANT's employment.

2. The Arbitration Agreement is Neither Procedurally Nor Substantively Unconscionable.

The arbitration agreement PILANT signed is also unenforceable under the doctrine of unconscionability. Under the FAA arbitration agreements are unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. §2. Further, even under California law, the arbitration provision is not unconscionable and is enforceable.

In California, unconscionability refers to "an absence of a meaningful choice" on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. *Sonic-Calabasas A, Inc. v. Moreno,* 57 Cal.4th 1109, 1133 (2013); *Armendariz, supra,* 24 Cal.4th at 114. Moreover, both procedural and substantive unconscionability must be proven before an arbitration agreement can be found to be unconscionable. *Id*. It is the burden of the party resisting arbitration who to prove unconscionability. *Pinnacle Museum Tower Ass'n v. Pinnacle Market Dev*., 55 Cal.4th 223, 247 (2012).

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a. PILANT Cannot Demonstrate A Substantial Degree of Procedural Unconscionability.

According to the California Supreme Court:

> Unconscionability consists of both procedural and substantive elements. The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. [Citation.] Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided. [Citation.] A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be "so one-sided as to shock the conscience." [Citation.]
>
> The party resisting arbitration bears the burden of proving unconscionability. [Citation.] Both procedural unconscionability and substantive unconscionability must be shown, but "they need not be present in the same degree" and are evaluated on "a sliding scale." [Citation.] "[T]he 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."

Pinnacle Museum Tower Assn., 55 Cal.4th 223 at 246-47.

Procedural unconscionability focuses on "oppression or surprise due to unequal bargaining power." *Sonic-Calabasas A, Inc. v. Moreno*, *supra*, 57 Cal.4th at 1133. Here, there is no procedural unconscionability. The inclusion of the arbitration agreement in PILANT's Employment Agreement could not have surprised PILANT because Section 15 of the Agreement provides, in clear and conspicuous ALL CAPS font, PILANT's acknowledgement that he had carefully read Section 15, has had the opportunity to review the provisions of Section 15 with any of his advisors, he voluntarily agreed to arbitrate all disputes, and by signing, signified his understanding and agreement to Section 15. (Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

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b. To Avoid Enforcement of the Agreement to Arbitrate, PILANT Would Have to Demonstrate a High Degree of Substantive Unconscionability.

Even if there was minimal procedural unconscionability, which is denied, under California law, where the employee, like PILANT, is "highly educated," the degree of procedural unconscionability is "low," requiring a high degree of substantive unconscionability to be shown to render the arbitration provision unenforceable. *Dotson v. Amgen, Inc*., 181 Cal.App.4th 975, 981 (2010). In *Dotson*, the plaintiff was a high level, highly compensated employee and, thus, the court found minimal procedural unconscionability even though the agreement presented was on a take-it or leave-it basis. The *Dotson* court pointed out that the plaintiff, like PILANT, was not an uneducated, low-wage employee without the ability to understand that he was agreeing to arbitration. He was the opposite—a highly educated professional, who knowingly entered into a contract containing an arbitration provision in exchange for generous compensation and benefits.

In such circumstances, courts find a minimal degree of procedural unconscionability. *Dotson, supra*, 181 Cal.App.4th 975, 981–982, *citing, Giuliano v. Inland Empire Personnel, Inc*., 149 Cal.App.4th 1276, 1292 (2007) ("'the compulsory nature of a pre-dispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness'."); *Mercuro v. Superior Court*, 96 Cal.App.4th 167, 175 (2002) (high degree of procedural unconscionability not present where employee was neither threatened nor bullied into signing agreement)*; C.H.I., Inc. v. Marcus Bros. Textile, Inc*., 930 F.2d 762, 763 (9th Cir.1991) (financial necessity to accept contract requiring arbitration does not constitute economic duress); *Cohen v. Wedbush, Noble, Cooke, Inc*., 841 F.2d 282, 286 (9th Cir.1988), overruled on another ground in *Ticknor v. Choice Hotels Intern., Inc*., 265 F.3d 931, 941 (9th Cir.2001) (rejecting contention that arbitration agreement was an unconscionable adhesion contract simply because all securities brokers were required to execute them).

Here, as in *Dotson,* PILANT was a sophisticated, high-level executive, Vice President and General Manager of a large gaming enterprise and resort, who had significant duties and received a base salary and other compensation in excess of $315,000/year. (Dkt. 4-6, ¶4; Dkt. 4-7, §§3-4.) PILANT was not an uneducated, low-wage employee without the ability to understand that he was agreeing to arbitration. And like the *Dotson* Plaintiff, PILANT knowingly entered into a contract containing an arbitration provision in exchange for a very generous compensation and benefits package. As a result the degree of procedural unconscionability here is minimal, if any, and the arbitration provision cannot be invalidated absent a showing of a high degree of substantive unconscionability. *Dotson, supra,* 181 Cal.App.4th at 981.

c. PILANT Cannot Demonstrate A High Degree of Substantive Unconscionability.

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." *Pinnacle Museum Tower Ass'n., supra,* 55 Cal.4th at 246. Arbitration agreements that encompass any unwaivable statutory rights (such as claims under FEHA or the Labor Code) are subject to particular scrutiny. *Armendariz, supra,* 24 Cal.4th at 100. The following elements of "essential fairness" are required in any arbitration agreement to permit the employee to vindicate (not lose or compromise) their statutory rights:

- selection of a neutral arbitrator;
- adequate discovery;
- all types of relief otherwise available in court (monetary damages, injunction, reinstatement, etc.);
- a written arbitration award that permits limited judicial review; and
- employer pays arbitrator's fees and all costs unique to arbitration.

Armendariz, supra, 24 Cal.4th at p. 118.

Here, the arbitration provision satisfies all of the foregoing elements of essential fairness. (Dkt. 4-6, ¶4; Dkt. 4-7, §15.) It is contained in a writing that was negotiated at arm's length by a sophisticated, long-term, executive-level employee, after he had an opportunity to consult with a lawyer or other advisor. There was no surprise or oppression – as PILANT was presented with an arbitration provision in his written Employment Agreement which, as he acknowledged, he had the opportunity to review and discuss with advisors before signing it. The arbitration provision is not overly long (1.5 pages in a 17-page agreement), and the section on dispute resolutions states in large capital letters that the parties voluntarily agree to arbitrate all disputes. (Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

The terms of the arbitration provision are also not harsh, one-sided, or unfair for purposes of assessing substantively unconscionable. Rather, the arbitration agreement in Section 15 requires arbitration by a neutral AAA arbitrator chosen by the parties in accordance with the applicable rules which were easily accessible; provides for adequate discovery; allows for all remedies available in judicial proceedings; permits parties the ability to present witnesses; requires a written award and written opinion "setting forth the factual and legal basis for the award," which can be confirmed, enforced, or challenged in a court of law; and calls for a minimal filing fee by PILANT. (Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

Because there is no high (or any) degree of substantive unconscionability here, the arbitration agreement in Section 15 of the Employment Agreement is not unconscionable and must be enforced.

B. <u>The Arbitration Agreement Encompasses the Dispute at Issue</u>.

In addition to showing a valid arbitration agreement exists between PILANT and CES, the agreement also encompasses the dispute at issue." *See*, *Chiron*, *supra*, 207 F.3d at 1130. The arbitration agreement here has a broad scope:

> Any dispute arising in connection with the validity, interpretation, enforcement, or breach of this Agreement or arising out of Executive's employment or termination of employment with the Company; under any

> statute, regulation, ordinance or the common law; or otherwise arising between Executive, on the one hand, and the Company or any of its Subsidiaries or Affiliates, on the other hand, the Parties shall (except to the extent otherwise provided in Section 10(i) with respect to certain requests for injunctive relief) be submitted to binding arbitration before the American Arbitration Association ("AAA") for resolution.

(Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

PILANT's Complaint, which he characterizes as a "'whistleblower' employment law action," alleges four causes of action for wrongful termination in violation of public policy, violation of Labor Code §6310, violation of Labor Code §1102.5, and breach of written employment agreement. (Dkt. 1-5.) As discussed above, the claims that are covered by the arbitration agreement include all claims that "aris[e] out of Executive's employment or termination of employment with the Company under any statute, regulation, ordinance, or the common law." Given the broad scope of the arbitration agreement, there is no question that every single one of PILANT's four statutory and/or common law employment claims, and the damages he seeks in relation thereto, arise out of his former employment with CES and his resignation from the same. Therefore, PILANT's entire action is encompassed by and falls squarely within the plain language of the arbitration agreement. (Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

C. <u>The Agreement Requires that the Arbitration be held in Nevada</u>.

The arbitration agreement states in part: "Such arbitration shall be conducted in Las Vegas, Nevada…" (Dkt. 4-6, ¶4; Dkt. 4-7, §15.) District courts have jurisdiction to enforce a forum-selection clause in an arbitration agreement under 9 U.S.C. §4 ("arbitration [shall] proceed in the manner provided for in [the] agreement…"). *Sterling Fin'l Inv. Group, Inc. v. Hammer*, 393 F.3d 1223, 1225 (11th Cir. 2004). "Mere inconvenience" is not a sufficient basis for a court to set aside a forum selection clause in an arbitration agreement. Enforcement of a venue provision is required in those circumstances. *In re Mercurio*, 402 F.3d 62, 66 (1st

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Cir. 2005). Accordingly, the Court should order this case to arbitration in Nevada. (Dkt. 4-6, ¶4; Dkt. 4-7, §15.)

D. <u>This Action Should be Stayed Pending Arbitration</u>.

An order compelling arbitration results in a mandatory stay of the action in the pending Court. 9 U.S.C. §3; Cal. Code Civ. Proc. §1281.4 (Courts which order arbitration shall, upon motion of a party, stay the action or proceeding); *Twentieth Century Fox Film Corp. v. Superior Court*, 79 Cal.App.4th 188, 192 (2000); *Lane-Tahoe, Inc. v. Kindred Construction Company, Inc.*, 91 Nev. 385, 388, 536 P.2d 491,493 (1975) (where a party to judicial proceedings that involving issues subject to a contractual arbitration agreement applies for a stay of proceedings in order to arbitrate, the court must grant the application) (interpreting prior act); *see also*, *County of Clark v. Blanchard Construction Company,* 98 Nev. 488, 491, 653 P.2d 1217, 1219 (1982) (interpreting prior act).) All of PILANT's claims in this action are subject to the arbitration clause. Thus, the Court should stay further proceedings in this action pending completion of the arbitration.

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V.

CONCLUSION

DARREL PILANT voluntarily entered into a binding contract with CES in exchange for valuable consideration, pursuant to which he agreed to submit all disputes with CES related to his employment to binding arbitration through AAA. That was agreed to in September 2016 and PILANT is bound by that agreement under federal law, as well as California and Nevada state law. The arbitration agreement that PILANT voluntarily signed is binding and enforceable against both parties and requires that this case be sent to binding arbitration and that the case be stayed pending the arbitration.

Dated: April 6, 2021

GREENE & ROBERTS

By: */s/ Maria C. Roberts*
Maria C. Roberts
Ryan Blackstone Gardner
Attorneys for Defendant Caesars Enterprise Services, LLC