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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JESSICA BARRAZA, an individual,

Plaintiff,

vs.

TESLA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS TESLA MOTORS, INC., a Delaware Corporation and DOES 1 through 50, inclusive,

Defendants.

Case No.: 21CV002714

[Assigned For All Purposes to Judge Stephen Kaus]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT TESLA INC.'S MOTION TO COMPEL ARBITRATION AND STAY ACTION

RESERVATION NO.: 116584057486

Complaint Filed: November 18, 2021
Trial Date: None Set

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I. INTRODUCTION

Plaintiff Jessica Barraza ("Plaintiff") is a former employee of Defendant Tesla, Inc. ("Defendant") (collectively, the "Parties") who filed a complaint on November 18, 2021 asserting several employment-related claims under the Fair Employment and Housing Act ("FEHA"). Declaration of Christina T. Tellado ("Tellado Decl."), Ex. 1.

On October 17, 2018, Plaintiff signed an agreement to arbitrate "any and all disputes, claims, or causes of action, in law or equity, arising from or relating to [Plaintiff's] employment, or the termination of [Plaintiff's] employment." Declaration of Helen Sim ("Sim Decl."), ¶ 14, Ex. 5 at pp. 2-3. The arbitration agreement also provides that "[a]ny claim, dispute, or cause of action must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding." *Id*. Because this agreement encompasses every claim pleaded in Plaintiff's complaint, the Court should order Plaintiff to individually arbitrate those claims and stay this case pursuant to the Federal Arbitration Act and California Arbitration Act.

II. STATEMENT OF FACTS

Plaintiff is a former employee of Tesla. Sim Decl., ¶ 6. Shortly before starting her employment with Tesla, Plaintiff affixed her electronic signature to an offer letter she received. *Id.* ¶¶ 6-17, Ex. 5 at p. 7. The offer letter that Plaintiff agreed to includes an arbitration clause which reads in relevant part:

> "[Y]ou and Tesla agree that any and all disputes, claims, or causes of action, in law or equity, arising from or relating to your employment, or the termination of your employment, will be resolved, to the fullest extent permitted by law by ***final, binding and confidential arbitration*** in your city and state of employment conducted by the Judicial Arbitration and Mediation Services/Endispute, Inc. ("JAMS"), or its successors, under the then current rules of JAMS for employment disputes…" *Id.* Ex. 5 at pp. 2-3 (emphasis added).

Plaintiff unequivocally agreed to the terms of her offer letter by electronically signing it on October 17, 2018. *Id*. ¶¶6-17, Ex. 5 at p. 7.

On November 18, 2021, Plaintiff filed a complaint in this Court alleging causes of action for: (1) sexual harassment in violation of FEHA; (2) failure to prevent sexual harassment in violation of FEHA; (3) retaliation in violation of FEHA; and (4) declaratory relief. Tellado Decl.,¶ 2, Ex. 1.

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Tesla has moved to compel all of the asserted claims as early in the litigation as it could have. *Id.*, ¶ 3. Other than this Motion, neither party has filed any motions in this action. *Id*. The Court has not considered any issue relating to the merits of Plaintiff's claims or decided any procedural questions of significance. *Id*. The Parties have not served any written discovery or noticed any depositions. *Id*.

As set forth in paragraphs 46 through 49 of the Complaint, Plaintiff is aware of the existence of the arbitration agreement; however, she contends that it is unenforceable. *Id.*, ¶ 5. For the reasons set forth below, Plaintiff is mistaken.

III. LEGAL ARGUMENT

A. The Federal Arbitration Act And California Arbitration Act Each Require Arbitration Of Disputes Subject To An Agreement To Arbitrate

Under the Federal Arbitration Act ("FAA"), agreements to arbitrate controversies arising out of transactions involving commerce "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. Section 2 of the FAA "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). "The effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act." *Id.*; *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) ("[C]ourts must place arbitration agreements on an equal footing with other contracts…and enforce them according to their terms").

As the Ninth Circuit has explained, "[t]he FAA embodies a clear federal policy in favor of arbitration" and "was designed to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate…and to place such agreements upon the same footing as other contracts." *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999). The FAA requires courts to issue an order compelling the parties to arbitrate a dispute that is governed by a valid arbitration agreement. 9 U.S.C. § 4 ("upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is

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not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.").

California law is in accord. The California Arbitration Act ("CAA") states that "[a] written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract" and that "the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists." Cal. Code Civ. Proc. §§ 1281 & 1281.4. Similar to federal law, California has a "strong public policy in favor of arbitration." *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9 (1992); *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street*, 35 Cal. 3d 312, 322 (1983); *see also Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83, 97-98, 114 (2000) ("California law, like federal law, favors enforcement of valid arbitration agreements….Thus, under both federal and California law, arbitration agreements are valid, irrevocable, and enforceable."). An "arbitration agreement that an employer imposes upon an employee as a condition of employment" is fully enforceable and may be applied to all non-waivable claims. *Pearson Dental Supplies, Inc. v. Sup. Ct.*, 48 Cal. 4th 665, 677 (2010); *see also Baltazar v. Forever 21, Inc.*, 62 Cal. 4th 1237 (2016) (enforcing arbitration agreement made as condition of employment).

Thus, Tesla is entitled to an order compelling arbitration of all claims within the scope of the arbitration agreement in Plaintiff's offer letter. As explained below, all of Plaintiff's claims fall within the scope of the arbitration agreement, and there are no grounds for revocation of the agreement.

B. Plaintiff's Claims Are Within the Scope Of The Parties' Arbitration Agreement

The Supreme Court has directed that "[w]hen deciding whether the parties agreed to arbitrate a certain matter…courts generally…should apply ordinary state-law principles that govern the formation of contracts" and that **"any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."** *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (emphasis added). The same is true under California law. *See Chan v. Drexel Burnham Lambert, Inc.*, 178 Cal. App. 3d 632, 640 (1986) ("The existence of a valid agreement to arbitrate

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involves general contract principles"); *see also Ericksen*, 35 Cal. 3d at 323 (1983) ("as under federal law…**doubts concerning the scope of arbitrable issues are to be resolved in favor of arbitration**.") (emphasis added). Indeed, **"[c]ourts should indulge every intendment to give effect to such proceedings and order arbitration *unless* it can be said with assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."** *Pacific Inv. Co. v. Townsend*, 58 Cal. App. 3d 1, 9 (1976) (emphasis added).

The offer letter signed by Plaintiff unambiguously requires her to submit to arbitration "any and all disputes, claims, or causes of action, in law or equity, arising from or relating to your employment, or the termination of your employment." Sim Decl., ¶¶ 6-17, Ex. 5 at p. 2. There can be no doubt that the FEHA claims alleged by Plaintiff are "arising from or relating to" Plaintiff's employment with Tesla. For example, Plaintiff alleges that she "is a woman employed by Tesla" and "was subjected to severe and pervasive harassing conduct from her colleagues and managers because she is a woman." Tellado Decl.,¶ 2, Ex. 1, ¶¶51-52. Plaintiff further alleges that her "circumstances constituted a hostile work environment." *Id*., ¶54.

The Court should compel individual arbitration pursuant to 9 U.S.C. § 4 and Cal. Code Civ. Proc. § 1281.4 because Plaintiff agreed to arbitrate all of the claims in her Complaint,

C. No Grounds Exist For Revocation Of Plaintiff's Arbitration Agreement

1. The Arbitration Agreement Is Compliant With The Armendariz Factors

In *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83, 102-13 (2000), the California Supreme Court established five elements to be considered when determining whether an agreement to arbitrate non-waivable statutory claims is enforceable. An arbitration agreement between an employer and employee satisfies the *Armendariz* requirements if it: (1) provides for a neutral arbitrator; (2) makes the full range of statutory remedies available; (3) permits "adequate discovery"; (4) provides for "a written arbitration decision that will reveal, however briefly, the essential findings and conclusions on which the award is based;" and (5) provides that the employer will "pay all types of costs that are unique to arbitration." An agreement to arbitrate non-waivable claims that is silent on these protections is deemed to implicitly incorporate them, absent language to the contrary. *Armendariz*, 24 Cal. 4th at 103-13.

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Here, the offer letter is fully compliant with the *Armendariz* requirements. First, the applicable JAMS Employment Rules provide that the arbitration "shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise," and gives both sides the right to participate in the selection of the arbitrator. Request for Judicial Notice ("RJN"), Ex. 1 at Rules 7 & 15. Second, the letter does not limit Plaintiff's discovery in any way and in fact states that the "arbitrator shall have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law."[1] Sim Decl., Ex. 5 at p. 2. The JAMS Rules also provide for reasonable discovery. RJN, Ex. 1 at Rule 17. Third, the offer letter requires that the arbitrator "issue a written arbitration decision including the arbitrator's essential findings and conclusions and a statement of the award." Sim Decl., Ex. 5 at p. 2. Additionally, the JAMS Rules state that the arbitrator shall render an award that "shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim." RJN, Ex. 1 at Rule 24(h).

Fourth, the offer letter does not restrict the types of relief available to the parties. In fact, the agreement provides that both Plaintiff *and* Tesla "shall be entitled to all rights and remedies that [Plaintiff] or Tesla would be entitled to pursue in a court of law." Sim Decl., Ex. 5 at p. 2. Furthermore, Rule 24 of the JAMS Rules provides that the "Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy" and permits the arbitrator to award attorney's fees and expenses and interest if provided by the agreement "or allowed by applicable law." RJN, Ex. 1 at Rule 24(c).

Finally, the arbitration agreement does not require Plaintiff to bear unreasonable expenses, arbitration forum costs, or expenses they would not be required to bear if they brought their action in court. Instead, the agreement expressly provides that "Tesla shall pay all fees in excess of those which would be required if the dispute was decided in a court of law." Sim Decl., Ex. 5 at p. 2.

[1] Under *Armendariz*, an agreement need not allow "the full panoply of discovery" that would be available in court. *Armendariz*, 24 Cal. 4th at 106. Rather, parties are "entitled to discovery sufficient to adequately arbitrate their statutory claim." *Id*.

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1 Thus, the arbitration agreement signed by Plaintiff fully complies with Armendariz and is
2 enforceable.[2]

3 2. The Arbitration Agreement Is Not Unconscionable

4 To the extent Plaintiff attempts to argue that her arbitration agreement is unconscionable,
5 Plaintiff will be unable meet her burden of establishing both procedural and substantive
6 unconscionability. In fact, several courts, including this one, have concluded that substantially
7 similar arbitration agreements in other Tesla employees' offer letters are not unconscionable and are
8 fully enforceable. *See, e.g., Davis v. Tesla, Inc.,* Case No. RG20071150 (RJN, Ex. 3); *Lambert v.*
9 *Tesla, Inc*., Case No. RG17854516 (RJN, Ex. 4); *Rodriguez v. Telsa, Inc.,* Case No. RG19013428
10 (RJN, Ex. 5); *Hidalgo v. Tesla Motors, Inc*, 2016 WL 3541198 (N.D. Cal. 2016).

11 Agreements to arbitrate may be invalidated only on "generally applicable contract defenses,
12 such as fraud, duress, or unconscionability." *Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 687
13 (1996); *Cronus Investments, Inc. v. Concierge Services*, 35 Cal. 4th 376, 385 (2005). A party
14 challenging an arbitration agreement on the grounds of unconscionability must establish *both*
15 procedural and substantive unconscionability. *See Nguyen v. Applied Med. Res. Corp.*, 4 Cal. App.
16 5th 232, 247 (2016) ("Both procedural and substantive unconscionability must be present for the
17 court to refuse to enforce a[n arbitration] contract under the doctrine of unconscionability."); *see also*
18 *Gatton v. T-Mobile USA, Inc.*, 152 Cal. App. 4th 571, 579 (2007) ("To be unenforceable, a[n
19 arbitration] contract must be both procedurally and substantively unconscionable."). The relationship
20 between procedural and substantive unconscionably operates on a sliding scale such that when "the
21 degree of procedural unconscionability of an adhesion agreement is low," "the agreement will be
22 enforceable unless the degree of substantive unconscionability is high," and vice versa. *Serpa v.*
23 *California Surety Investigations, Inc.*, 215 Cal. App. 4th 695, 704 (2013); *see also Baltazar*, 62 Cal.
24 4th at 1244.

25 Procedural unconscionability involves "the manner in which agreement to the disputed term
26 was sought or obtained, such as unequal bargaining power between the parties and hidden terms
27
28

[2] Additionally, the JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness is applicable to Plaintiff's claims and incorporates and tracks the *Armendariz* requirements. RJN, Ex. 2.

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included in contracts of adhesion." *Szetela v. Discover Bank*, 97 Cal. App. 4th 1094, 1099 (2002). However, "[t]he adhesive nature of the contract will not always make it procedurally unconscionable. When bargaining power is not grossly unequal and reasonable alternatives exist, oppression typically inherent in adhesion contracts is minimal." *Roman v. Superior Court*, 172 Cal. App. 4th 1462, 1470 (2009). The California Supreme Court held in *Baltazar v. Forever 21* that adhesive employment contracts are not subject "to the same degree of scrutiny as '[c]ontracts of adhesion that involve surprise or other sharp practices.'" *Baltazar*, 62 Cal. 4th at 1245.

Here, Tesla did not subject Plaintiff to any "surprise or other sharp practices" that would warrant a finding of procedural unconscionability. The arbitration agreement is contained in Plaintiff's short, four-page offer letter. The agreement and its full terms are printed on the second and third pages of the letters. There are no hidden terms set forth in smaller print. The agreement states in clear terms that it is for "final, binding and confidential arbitration." Sim Decl., Ex. 5. at p. 2. The agreement was e-mailed to Plaintiff, and she was given time to review it, including to consult with counsel if she chose to do so. Sim Decl., ¶¶ 9-12, Ex. 5. Consequently, Plaintiff cannot show the arbitration agreement that she voluntarily agreed to was procedurally unconscionable.

Substantive unconscionability "focuses on the terms of the agreement and whether those terms are so one-sided as to shock the conscience." *Kinney v. United Healthcare Servs.*, 70 Cal. App. 4th 1322, 1330 (1999) (emphasis in original) (internal quotations omitted). Substantive unconscionability will be found only when the terms of an agreement create "overly harsh" or "one-sided" results. *Little v. Auto Stiegler, Inc.*, 29 Cal. 4th 1064, 1071 (2003); *A & M Produce Co. v. FMC Corp.*, 135 Cal. App. 3d 473, 487 (1982).

Here, the arbitration agreement is bilateral and applies equally to Plaintiff and Tesla. Sim Decl., Ex. 5 at p. 2. The language in the arbitration agreement indicates that the provisions apply to "both you and Tesla." *Id*. Further, as set forth above, the agreement satisfies the requirements set forth for a lawful arbitration agreement in *Armendariz*, 24 Cal. 4th at 102. Moreover, the agreement provides that arbitration will proceed in accordance with the JAMS Employment Arbitration Rules, which courts have held are fair and not unconscionable. Sim Decl., Ex. 5 at p. 2; *see, e.g.*, *Sanchez v. Gruma Corp.*, 2019 WL 1545186, at *3 (N.D. Cal. 2019) (rejecting various arguments that JAMS

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Employment Rules are unconscionable). And none of the terms of the arbitration provision are unreasonably or grossly favorable to one side or the other. *See Galen v. Redfin Corp.*, 227 Cal. App. 4th 1525, 1541-43 (2014) (holding that agreement requiring arbitration of employment-based disputes not substantively unconscionable); *see also Peng v. First Republic Bank*, 219 Cal. App. 4th 1462, 1472-74 (2013) (same); *see also Oguejiofor v. Nissan*, 2011 WL 3879482, at *3-5 (N.D. Cal. 2011).

Because the arbitration agreement in Plaintiff's offer letter is neither procedurally nor substantively unconscionable, it must be enforced according to its terms.

3. If The Court Finds Any Provisions Of The Arbitration Agreement Unlawful, The Court Should Sever Any Such Provisions And Enforce The Remainder Of The Agreement

Under California law, when a court determines that a contract contains an unconscionable clause, "it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." Cal. Civ. Code § 1670.5. Severance of an unconscionable provision in an arbitration agreement in California is preferred unless the agreement is "permeated" with unconscionability. *Armendariz*, 24 Cal. 4th at 122 (2000) (Cal. Civ. Code § 1670.5 "contemplate[s] [invalidation of an entire agreement] only when an agreement is 'permeated' by unconscionability"); *Sanchez v. W. Pizza Enters., Inc.*, 172 Cal. App. 4th 154, 180 (2009) ("[g]enerally speaking, when an arbitration agreement contains a single term in violation of public policy, that term will be severed and the rest of the arbitration agreement enforced"); *Farrar v. Direct Commerce, Inc.*, 9 Cal. App. 5th 1257, 1275 (2017) (trial court abused its discretion in declining to sever single unlawful provision from arbitration agreement). Courts will also sever multiple unlawful provisions when they are collateral to the main purpose of the contract and do not "permeate" the agreement. *See*, *e.g.*, *Lucas v. Gund, Inc.*, 450 F. Supp. 2d 1125, 1134 (C.D. Cal. 2006) (severing two unlawful provisions in arbitration agreement); *Jones v. Deja Vu, Inc.*, 419 F. Supp. 2d 1146, 1150 (N.D. Cal. 2005) (same).

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For these reasons, any unconscionable or otherwise unlawful provisions in the Parties' arbitration agreement (there are none) should be severed, and the remainder should be left intact and enforced.

D. This Action Should Be Stayed Pending The Outcome of Arbitration

Under the FAA, when there exists "any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, ***shall*** on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3 (emphasis added). "***The stay provision is mandatory***: 'If the issues in a case are within the reach of the Agreement, the district court has no discretion under section 3 to deny the stay.'" *Anderson v. Pitney Bowes, Inc.*, 2005 WL 1048700, at *6 (N.D. Cal. 2005) (emphasis added) (quoting *Midwest Mech. Contractors, Inc. v. Commonwealth Const. Co.*, 801 F.2d 748, 751 (5th Cir. 1986)). California law is in accord and requires that "[t]he court... ***shall***... stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate…" Cal. Code Civ. Proc. § 1281.4 (emphasis added). The Court must therefore stay this case pending both the hearing on Tesla's Motion to Compel Arbitration and the ultimate conclusion of arbitration.

IV. <u>CONCLUSION</u>

For the foregoing reasons, Tesla respectfully requests that the Court enforce the arbitration agreement as written by compelling Plaintiff to submit her claims in this action to binding individual arbitration with JAMS. In addition, Tesla requests that the Court stay this case until completion of the arbitration.

Dated: December 17, 2021

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2 STATE OF CALIFORNIA)
) ss.
3 COUNTY OF LOS ANGELES)

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 400 S. Hope Street, 8th Floor, Los
5 Angeles, California 90071.

6 On **December 17, 2021**, I caused the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT TESLA INC.'S**
7 **MOTION TO COMPEL ARBITRATION AND STAY ACTION** to be served on the interested parties in this action as follows:

8

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14 **[X] BY EMAIL (CCP §§ 1013(a))** Based on a court order or an agreement of the parties to
15 accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) indicated above. I did not receive, within a reasonable time
16 after the transmission, any electronic message or other indication that the transmission was unsuccessful.

17

18 **[X] (STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

19 Executed on **December 17, 2021**, at Los Angeles, California.

20

21

22 Carolina Del Real

23
24
25
26
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