Tentative Rulings for December 4, 2024
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(20) **Tentative Ruling**

Re: ***Garcia v. Tri-Valley Plastering, Inc.***
Superior Court Case No. 22CECG00591

Hearing Date: ~~December 4, 2024 (Dept. 503)~~ *see below*

Motion: Report by Class Counsel Pursuant to Code of Civil Procedure Section 384, Subdivision (b)

Tentative Ruling:

To continue the hearing to November 13, 2025, at 3:30 p.m. in Department 503. Within 10 days of the continued hearing date the settlement administrator shall file a supplemental report showing that funds from uncashed checks have been transmitted to the approve the State Controller's Office, Unclaimed Property Division, in the names of the relevant class members.

Explanation:

In the 12/21/2023 order granting final approval of the class action settlement the court set a hearing date for 12/4/2024 to inform the court of the total amount actually paid to the class members, pursuant to Code of Civil Procedure section 384, subdivision (b), so that the judgment can be amended and the distribution of any *cy pres* funds can be ordered.

The declaration submitted establishes proper payment of the amounts required by the settlement was made and that 257 checks (out of 858 mailed) to class members totaling $146,207.57 remain uncashed after the 180-day deadline. The approved settlement calls for payment of such funds to the State Controller's Office, Unclaimed Property Division, in accordance with Code of Civil Procedure section 384, subdivision (b). The State Controller's Office has directed that the settlement administrator hold the funds for one year from the date of notification. Accordingly, the court will continue the hearing to a date after the funds should been so distributed in September of 2025.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 12/2/24 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Cruz v. Hyundai Motor America***
Superior Court Case No. 24CECG02661

Hearing Date: December 4, 2024 (Dept. 503)

Motion: By Defendant to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

Plaintiff Lilia Cruz filed the present action regarding the purchase of a 2021 Hyundai Santa Fe, which Plaintiff alleges came with manufacturer warranties. Problems with the vehicle ensued which form the basis of the instant complaint for damages. Plaintiff brought three causes of action against defendant Hyundai Motor America, for breach of express warranties afforded through the Song-Beverly Act; breach of implied warranties afforded through the Song-Beverly Act, and violation of section 1793.2 of the Civil Code.

Defendant Hyundai Motor America moves to compel arbitration pursuant to Plaintiff's agreement to do so in the Owner's Handbook and Warranty Information manual ("the Manual"); and in the Connected Services Agreement ("CSA") associated with enrollment in Hyundai's Bluelink services.

In moving to compel arbitration, defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc. § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Ca1.App.4th 1497, 1505) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Owner's Manual

Defendant submits that there is an arbitration provision housed in the Manual. A copy of a document titled "Owner's Handbook and Warranty Information" is attached

as Exhibit 3 to the declaration of Ali Ameripour, counsel for defendant. Plaintiff objects for a lack of foundation. The objection is sustained. Nothing in counsel's declaration provides foundation to tie Exhibit 3 to the plaintiff.

Even had the document been admissible, nothing in the Manual suggests that a contract was created. Among other things, essential to a contract are: parties capable of contracting; and their consent. (Civ. Code § 1550.) Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) Strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration. (*Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142.)

Terms of a contract are ordinarily to be determined by an external, not an internal standard; the outward manifestation or expression of assent is the controlling factor. (*Windsor Mills, Inc. v. Collins & Aikman Corp.* (1972) 25 Cal.App.3d 987, 992.) Where an offeree does not know that a proposal has been made to him, this objective standard does not apply. (*Id.* at p. 993.) An offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he was unaware, contained in a document whose contractual nature is not obvious. (*Ibid.*) This principle of knowing consent applies with particular force to provisions for arbitration; if a party wishes to bind in writing another to an agreement to arbitrate future disputes, such purpose should be accomplished in a way that each party to the arrangement will fully and clearly comprehend that the agreement to arbitrate exists and binds the parties thereto. (*Id.* at pp. 993-994.)

Plaintiff expressly rejects that she ever signed any agreement under the Manual. (Cruz Decl., ¶ 6.) Plaintiff further declared that she had no notice from either the non-party seller nor Defendant that there was any agreement to arbitrate in the Manual, and that her failure to opt out constituted an agreement. (*Id.*, ¶¶ 4-5.) Plaintiff did not expressly assent to any agreement in the handbook or act in a manner in which her failure to opt out was intended to accept the arbitration agreement.

Based on the above, the court finds that the Manual is not an enforceable written agreement to arbitrate. (*Windsor Mills, Inc. v. Collins & Aikman Corp., supra*, 25 Cal.App.3d at pp. 993-994 [finding that where a plaintiff was not advised of the arbitration provision and had no knowledge of the provision until after the demand for arbitration, there is no agreement to arbitrate, regardless of outward manifestations of apparent assent by acceptance of the object of the contract].) Even if there had been some indication of assent, because of the nature of the agreement is for arbitration, the party sought to be compelled to arbitration must have demonstrated knowledge or expectation of the provision. All of these factors are absent as to the Manual. Accordingly, the motion is denied as to the Manual.

Bluelink Connected Services Agreement

Defendant asserts the plaintiff agreed to arbitrate her warranty claims when she enrolled in the Hyundai Bluelink service and electronically acknowledged the

Connected Services Agreement. As evidence of plaintiff's agreement, Vijay Rao, Director of Connected Ops & Owner Apps/Web for defendant, attests to plaintiff having enrolled her vehicle in Bluelink services and the requirement that customers agree to the CSA or "Terms & Conditions" upon enrollment. (Rao Decl., ¶¶ 4-5.) Rao includes an example screen capture for activating Bluelink services and a copy of the CSA in effect on July 3, 2021. (*Id*., ¶ 6, Ex. 1 and 2.) The text of the CSA is available to review by clicking the hyperlink connected to the phrase "Terms & Conditions." (*Id*., ¶ 6.) Plaintiff objects to Mr. Rao's attestation of plaintiff having enrolled her vehicle in Bluelink services due to the lack of foundation for his knowledge. The objection is sustained.

Even if there was admissible evidence of plaintiff's electronic assent to arbitration pursuant to the CSA, the degree of both procedural and substantive unconscionability of the agreement require the court to find the CSA so unconscionable as to be unenforceable.

Unconscionability

The doctrine of unconscionability 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." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Id*. at p. 122; *Stirlen v. Supercuts, Inc*. (1997) 51 Cal.App.4th 1519, 1533; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174.)

Plaintiff contends that the arbitration provision is procedurally unconscionable as a contract of adhesion. A contract of adhesion is oppressive as a matter of law. (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 711.) Thus, there is some level of procedural unconscionability.

Additionally, the CSA buries the agreement to arbitrate all disputes regarding the vehicle generally within an agreement otherwise limited to clauses related to the services provided in the Bluelink service. A user agreeing to terms and conditions when enrolling in the Bluelink service may anticipate arbitration with regard to disputes related to that service but Hyundai has hidden an agreement to arbitrate all disputes regarding "your vehicle" generally within the terms and conditions. This supports finding a higher degree of procedural unconscionability.

" ' "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.]' " (*Tiri v. Luck Chances, Inc*. (2014) 226 Cal.App.4th 231, 243–244.) "Both, however, need not be present to the same degree. A sliding scale is applied so that ' " '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.' " ' " (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 178.) "The party opposing arbitration has the burden of proving unconscionability." (*Tiri*, *supra,* at p. 244.)

Plaintiff contends the contract is substantively unconscionable based on multiple "one-sided" clauses within the CSA. The application of the arbitration agreement to claims, like warranty claims, that can realistically only be brought by a consumer is substantively unconscionable. (See, *Stirlen v. Supercuts, Inc*. (1997) 51 Cal.App.4th 1519, 1540-1541.) The arbitration provision allows for "both you and Hyundai" to recover attorney' fees from the other party to the same extend as "you," the consumer, would in court. (CSA, ¶15(C).) This allows for the arbitrator to award attorney fees to Hyundai should it prevail in the warranty claim, contrary to Son-Beverly only allowing for an award of fees to a prevailing buyer and limiting a prevailing seller to costs. (Civ. Code §1794, subd. (b) and (d).) The provision exposes plaintiff to fees she would not otherwise be liable for and is substantively unconscionable. The CSA expressly prohibits the consumer from bringing claims more than one year after the claim arises. (CSA, ¶ 15(B).) This reduction in the limitations period for a consumer to bring claims against Hyundai from four years to one is substantively unconscionable. (*Fisher v. MoneyGram International, Inc*. (2021) 66 Cal. App.5th 1084, 1105.)

The collection of provisions highlighted by plaintiff demonstrate a significant degree of substantive unconscionability in addition to the high level of procedural unconscionability. As a result, the purported agreement to arbitrate all claims related to her vehicle with in the CSA is unenforceable.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 12/2/24.
(Judge's initials) (Date)