NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

J.K. RESIDENTIAL SERVICES, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

CELESTINA CAMPOS,

Real Party in Interest.

B243539

(Los Angeles County Super. Ct. No. BC467452)

APPEAL from an order of the Superior Court of Los Angeles County, Joanne O'Donnell, Judge. Treated as petition for writ of mandate. Petition granted.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Brittany H. Bartold, Azrezoo Jamshidi; Law Offices of Kevin B. Jones, Kevin B. Jones, Gregory W. Marks and Jeffrey Korn for Petitioner.

No appearance by Respondent.

Cohelan Khoury & Singer, Michael D. Singer, Jeff Geraci; The Pearl Law Firm and Steven G. Pearl for Real Party in Interest.

INTRODUCTION

Plaintiff Celestina Campos (Campos), formerly a residential property manager for defendant J.K. Residential Services, Inc. (defendant) under two successive employment agreements, filed a putative class action lawsuit against defendant alleging violation of various Labor Code wage and hour laws and the unfair competition law (Bus. & Prof. Code, § 17200). Defendant appeals from the order denying its renewed motion (Code Civ. Proc., § 1008, subd. (b))[1] to compel arbitration. We treat this appeal as a petition for writ of mandate and grant it.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant J.K. Residential is a residential property management company doing business in California and Arizona. Campos worked as an on-site apartment manager for defendant from 2002 until 2007. She returned to work for defendant in October 2009.

1. *The Atlas agreement*

Defendant had a "client service agreement" with AR3, LLC dba Atlas Resources (Atlas) under which Atlas provided administrative employer services that included administering employee payroll, arranging for workers compensation insurance, and paying employment taxes. Entered into just months before Campos resumed employment with defendant, the client services agreement purported to establish a "co-employer" relationship between Atlas as "administrative employer" and defendant as "worksite employer."

Upon Campos's return to work for defendant in 2009, Atlas provided her with a two-page "California New Employee Information Form" (Atlas agreement). Campos signed the Spanish version. At the bottom of the form, in the section for "Office Use Only," defendant's payroll supervisor signed acknowledging that "I understand that the employee is not active until all completed forms are received by Atlas Resources."

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

The arbitration clause was located on the bottom half of the form's page two, under "Employee Acknowledgement," which was written in large typeface. Set out in four numbered paragraphs, this section read in relevant part: "1. By accepting employment with Atlas Resources/Client, the undersigned agrees to submit any and all previously unasserted claims, disputes, lawsuits or controversies arising out of or relating to his or her application or candidacy for employment, his or her employment, or the cessation of his or her employment to binding arbitration . . . . The only claims that are not subject to this agreement to arbitrate are claims for work related injuries or occupational diseases under Worker's Compensation Laws or claims to unemployment compensation . . . . [¶] 2. By agreeing to submit your employment-related claims as set forth above to binding arbitration, you are waiving your right to have your claims presented to a judge or a jury in both federal and state civil court. [¶] . . . [¶] 4. Upon receipt of a notice of intent to initiate arbitration from employee or upon service of its own notice of intent to arbitrate upon an employee, Atlas Resources, Inc. will contact the American Arbitration Association [(AAA)] and request a panel of arbitrators. . . . Upon receipt of a list from the American Arbitration Association pursuant to its arbitration rules, an arbitrator will be jointly selected by the employee and Atlas/Client Company."

The agreement's signature line was located underneath this Employee Acknowledgment. Campos signed immediately below the statement in larger font that "The undersigned applicant agrees that he or she has knowingly and voluntarily waived his or her right to judicial resolution of any and all previously unasserted claims as that term is broadly defined in paragraph 1 above. This Application is executed without reliance upon any representations made by Atlas Resources/Client Company."

2. *The SOI agreement*

Defendant's contract with Atlas terminated in December 2010 and defendant entered into a new agreement with Strategic Outsourcing, Inc. (SOI).

In January 2011, SOI presented Campos with an eight page "Employee New Hire Documentation" (SOI agreement) in English. Four pages of this contract were SOI's

documents and the remainder were federal W-4 and employment eligibility verification forms. Defendant's payroll supervisor signed the second page.

The SOI agreement's "Section 3 – Assigned Employee Acknowledgments," was the last page of the contract, just before the authorization for direct payroll deposit. Section 3 contained nine paragraphs that described the contract between SOI and Campos; explained the prohibition against discrimination and sexual harassment; and described the procedure if the employee is injured on the job. Paragraph 4, in writing that was not distinguished, reads in pertinent part, "I and SOI mutually agree that any legal dispute involving SOI [or] Company . . . arising from or relating to my employment, wages, leave, employee benefits, application for employment, or termination from employment will be resolved exclusively through binding arbitration . . . ." One clause, printed in bold read, "If a matter is heard in court and not arbitration for any reason, **I and SOI mutually waive any right to a jury trial**." (Bold in original.) Campos signed the SOI agreement on the signature line at the bottom of this page.

Defendant fired Campos. Campos brought a putative class action against defendant for failure to pay minimum wage or overtime compensation, to provide pay statements, for waiting time penalties, and alleging violation of the unfair competition law (Bus. & Prof. Code, § 17200), and breach of an oral contract.

3. *The motion to compel arbitration*

Defendant moved to compel arbitration under the Atlas agreement, citing the strong state and federal policies favoring that procedure. (§ 1280 et seq. & 9 U.S.C. § 2.) Campos opposed the motion on the ground it was procedurally and substantively unconscionable and hence not enforceable. Campos noted that defendant was not named in the agreement it sought to enforce and that the Federal Arbitration Act (FAA) does not preempt California's laws invalidating contracts that are unconscionable.

Campos's attached declaration stated that when she began work in October 2009, she was given the Atlas agreement and told to sign it. Defendant never told her what was in the document or that she had a choice whether to sign it or to change any part. No one told her what arbitration was, or that one of the forms she signed had anything in it about

giving up her right to go to court. "No one ever mentioned the word 'arbitration.' " About a month before she ceased working for defendant, she was told to sign some forms. No one told her what was in the SOI agreement or that she had a choice whether to sign it or change any part of it.

The trial court denied defendant's motion without prejudice.

4. *The renewed motion*

Defendant deposed Campos with the aid of a Spanish language interpreter and filed the instant renewed motion to compel arbitration based on new facts derived from Campos's deposition. (§ 1008, subd. (b).) Therein, Campos confirmed that no one told her not to read the agreements first, prevented her from reading them, imposed a time limit for her review, or forced her to sign. No one told her that she could not ask questions. Campos acknowledged that she did not inquire about the documents she was asked to fill out, although she knew she was entitled to ask. Campos never asked whether she could negotiate the terms of the Atlas agreement. Nor did she ask whether she had a choice to sign or not. *No one told Campos that she would not get the job if she did not sign the Atlas agreement or that she would be fired or disciplined if she did not sign the SOI agreement; she signed voluntarily.*

Defendant's renewed motion also cited the newly executed declaration of Rowena Vinuya, defendant's Human Resources Manager. Vinuya declared that she explained to Campos about Atlas' relationship with defendant, reviewed the Atlas agreement with Campos, and advised her of the arbitration clause in the "Employee Acknowledgment" section before Campos signed. Vinuya further declared that in January 2011, she met with a group of employees including Campos and informed them of the change of service company to SOI. She distributed the SOI agreement, reviewed it, and advised the employees of the arbitration clause in the "Assigned Employee Acknowledgments" section before the employees signed. Both Atlas and SOI sent a bilingual representative to answer any questions employees had about the content of the employment documents.

The trial court denied defendant's renewed motion to compel arbitration in June 2012. The eight-page minute order explained that the two agreements to arbitrate were

not adhesive but nonetheless were procedurally and substantively unconscionable and the offending portions were not severable from the agreements so as to preserve the arbitration provisions.

Defendant filed its timely appeal from the order denying its renewed motion.[2] We took this case off calendar pending the Supreme Court's opinion in *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899 (*Sanchez*). We then asked the parties to submit supplemental letter briefs to address the impact of *Sanchez* and other recent case law in this area (See, e.g., *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*)).

DISCUSSION

1. *To avoid wasting judicial resources, we treat the appeal as a petition for writ of mandate.*

Defendant appeals from the trial court's order denying its renewed motion to compel arbitration under section 1008, subdivision (b). An order denying a renewed motion under subdivision (b) of section 1008 is not appealable. (*Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 159-160.) However, defendant submitted new evidence with its renewed motion as required by section 1008, subdivision (b) and filed a writ petition in this court. Delaying review of the question whether to compel arbitration until after trial would constitute an avoidable waste of judicial resources. Accordingly, under the circumstances, we exercise our discretion to treat the appeal as a writ petition and reach the merits. (*Tate*, at p. 160, fn. 10 [appellate court could have discretion to treat appeal from order denying § 1008, subd. (b) motion as a writ petition where newly discovered evidence was presented and the appealing party filed a petition for writ of mandate seeking extraordinary relief].)

2. *No federal preemption*

Defendant contends that the Atlas and SOI arbitration provisions should be upheld under the Federal Arbitration Act.

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[2] We note that we summarily denied defendant's petition for writ of mandate.

" 'In construing a contract providing for arbitration, the Court must first decide whether federal or state substantive law applies. [Citations.] Federal law will govern when the contract evidences a transaction 'involving commerce' [citations]; otherwise state law applies.' " (*Lounge-A-Round v. GCM Mills, Inc.* (1980) 109 Cal.App.3d 190, 194; *Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1286 (*Giuliano*), quoting from 9 U.S.C. § 2.) We broadly construe the phrase " 'evidencing a transaction involving commerce,' because the FAA 'embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause.' " (*Giuliano,* at p. 1286.)

The parties' subjective intent is not determinative. (*Giuliano*, *supra*, 149 Cal.App.4th at p. 1286.) An arbitration contract need not mention interstate commerce if it "in fact" involves interstate commerce. (*Id.* at p. 1288.) Thus, " 'evidencing a transaction involving commerce' " (9 U.S.C. § 2) . . . means that 'the "transaction" in fact "involv[es]" interstate commerce, even if the parties did not contemplate an interstate commerce connection.' [Citation.]" (*Id.* at p. 1286, quoting from *Allied–Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 281.) For example, the transaction in *Allied-Bruce Terminix* involved interstate commerce where the contract for residential pest control was between an Alabama customer and a multistate Terminix franchisee who used non-Alabama materials. (*Id.* at pp. 268 & 282.) The contract in *Giuliano* also involved interstate commerce where the employer was engaged in business throughout Arizona and California and the employee attended business trips outside California and negotiated multimillion dollar loans from non-California lenders. (*Giuliano*, at p. 1287.)

In contrast, the agreement did not involve interstate commerce in *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193 (*Hoover*), where a California resident sold life insurance policies for a Texas company. The record contained no evidence establishing that their relationship had "a specific effect or 'bear[ing] on interstate commerce in a substantial way.' [Citation.]" (*Id.* at p. 1207.) The plaintiff was not an employee of a national stock brokerage firm, did not work in any

other state or engage in multimillion dollar loan activity that affected interstate commerce. (*Id.* at pp. 1207-1208.) Likewise, in *Woolls v. Superior Court* (2005) 127 Cal.App.4th 197, we held that a single-home construction contract in California did not involve interstate commerce. (*Id.* at p. 213.)

Here, in support of its federal preemption argument, defendant points to its motion to compel arbitration and renewed motion, both of which cited the FAA and the California Arbitration Act as authority for compelling arbitration. Yet, as noted, defendant's subjective intent is not determinative. (*Giuliano*, *supra*, 149 Cal.App.4th at p. 1286.) Defendant's only other argument for invoking interstate commerce is that it engages in business in both California and Arizona, Atlas is a New Mexico corporation, while SOI is a North Carolina corporation. However, interstate commerce is not implicated merely because defendant does business in Arizona or because defendant's associates are foreign companies. (*Hoover*, *supra*, 206 Cal.App.4th at pp. 1207-1208.) Campos was a residential property manager in Los Angeles, did not engage in any activity that would have a bearing on interstate commerce in any way, let alone in a "substantial way." (*Id.* at p. 1207.) There is no evidence that Campos worked for defendant in any other state or engaged in major business transactions that affected interstate commerce. (*Id.* at pp. 1207-1208.) Therefore, this action does not fall within the ambit of federal law and so the FAA does not preclude application of state law rules concerning the enforceability of arbitration agreements.

3. *Standard of review*

" ' "The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract. [Citations.]" [Citation.]' [Citation.] Code of Civil Procedure sections 1281.2 and 1290.2 provide for the resolution of motions to compel arbitration in summary proceedings in which '[t]he petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. [Citation.] In these summary proceedings, the trial court sits as a trier of fact, weighing all the

affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination. [Citation.]' " (*Giuliano, supra*, 149 Cal.App.4th at p. 1284.) " 'Unconscionability is ultimately a question of law for the court.' [Citations.]" (*Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 89.) Accordingly, " '[w]e will uphold the trial court's resolution of disputed facts if supported by substantial evidence. [Citation.] Where, however, there is no disputed extrinsic evidence considered by the trial court, we will review its arbitrability decision de novo.' [Citation.]" (*Giuliano*, at p. 1284.)

4. *Neither agreement is procedurally unconscionable.*

As a threshold matter, compulsory arbitration is permissible, according to our Supreme Court, so long as the arbitration agreement " '(1) provides for neutral arbitrators, (2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum.' " (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 102 (*Armendariz*).) Defendant contends that the trial court erred in determining that two agreements were procedurally and substantively unconscionable. Campos does not claim, and the trial court did not cite these *Armendariz* requirements as the basis for its order denying the motion to compel. Instead, the court found that the agreements were not adhesive, but were nonetheless procedurally unconscionable because they cited the AAA rules as controlling but failed to attach those rules to the agreements and because the arbitration clauses were buried in the agreements in small typeface.

Unconscionability is a valid defense to a petition to compel arbitration. (*Sanchez, supra*, 61 Cal.4th at p. 912.) Unconscionability has both a procedural and a substantive element (*id.* at p. 910), "the former focusing on ' "oppression" ' or ' "surprise" ' due to unequal bargaining power, the latter on ' "overly harsh" ' or ' "one-sided" ' results. [Citation.]" (*Armendariz, supra*, 24 Cal.4th at p. 114.) Both elements of unconscionability must be present before a court may invalidate a contract or one of its

terms. (*Ibid.*; *Sanchez*, at p. 910.) The two elements need not be present in the same degree. "[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." (*Armendariz*, at p. 114.)

" ' " ' "Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice . . . ." ' " ' " (*Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, 1469.) "It 'turns on adhesiveness – a set of circumstances in which the weaker or "adhering" party is presented a contract drafted by the stronger party on a take it or leave it basis. To put it another way, procedural unconscionability focuses on the oppressiveness of the stronger party's conduct.' [Citation.]" (*O'Hare v. Municipal Resource Consultants* (2003) 107 Cal.App.4th 267, 283.) " ' " ' "Surprise involves the extent to which the terms of the bargain are hidden in a 'prolix printed form' drafted by a party in a superior bargaining position." ' " ' [Citations.]" (*Roman*, *supra*, at p. 1469.)

a. *Based on the trial court's resolution of factual disputes, there was no adhesion and impliedly no oppression.*

The trial court found that the agreements here were not adhesive and cited Campos's deposition testimony that she was never told she would not get the job if she failed to sign the Atlas agreement and was never told she would be fired if she did not sign the SOI agreement. The court also cited from Campos's deposition that she was not forced to sign any document and was never told she could not ask questions or that she asked questions but was ignored. The record additionally discloses that Vinuya reviewed the two agreements with Campos and advised her of the arbitration clauses. A bilingual representative was present to help and answer questions about the agreements' content. In her deposition, Campos acknowledged she was given as much time as she needed to read the contracts; she knew she could question them. She admitted she signed voluntarily.

This evidence not only supports the court's determination that the Atlas and SOI agreements were not adhesive, but shows the two agreements were not oppressive,

Campos's argument to the contrary notwithstanding. The arbitration provisions were not imposed as conditions of employment and Campos had ample opportunity to question and negotiate. (*Armendariz*, *supra*, 24 Cal.4th at p. 115.) Campos was not deprived of a choice, as she was never told there would be negative repercussions if she did not sign the agreements. (*Ibid.*) To the extent her earlier executed declaration contradicts these statements, in relying on the deposition testimony, the trial court impliedly determined that the latter testimony was more credible. We have no power to assess credibility or to reweigh the evidence. (*Soni v. Wellmike Enterprise Co. Ltd.* (2014) 224 Cal.App.4th 1477, 1489, fn. 3.)

We are not dissuaded by the sentence in the SOI agreement's section 3 that "*No modification to this page as originally written will be effective*" and the acknowledgment above defendant's signature on the Atlas agreement that "I understand that the employee is not active until all completed forms are received by Atlas Resources." (Italics added.) Campos argues these two sentences are evidence of adhesiveness. However, as noted, Atlas never told Campos she would not be hired, and SOI never told Campos she would be discharged or disciplined, if she chose not to sign the agreements.

Inequity is inherent in preemployment arbitration contracts. "[T]he economic pressure exerted by employers on all but the most sought-after employees may be particularly acute, for the arbitration agreement stands between the employee and necessary employment, and few employees are in a position to refuse a job because of an arbitration requirement." (*Armendariz*, *supra*, 24 Cal.4th at p. 115.) Yet, the court's "evaluation of unconscionability is highly dependent on context. . . . The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement." (*Sanchez*, *supra*, 61 Cal.4th at pp. 911-912.) Considering this entire record, including Campos's own testimony credited by the trial court, the economic realities did not function to prevent Campos from discussing the agreements, questioning them, or negotiating them free of negative consequences. Thus, the agreements were neither adhesive nor oppressive.

b. *The agreements were not unconscionable for failure to attach the AAA rules.*

The trial court cited two grounds for invalidating the agreements as procedurally unconscionable. First, the court was bothered by defendant's failure to attach the AAA rules to the agreements while declaring those rules to be controlling. A closer review of the contracts reveals that the SOI agreement did not cite to the AAA rules and so this is not a ground for invalidating the SOI agreement's arbitration provision. The Atlas agreement's reference to the AAA rules concerned solely the selection of an AAA arbitrator using the AAA's selection rules and required payment to AAA.

"Numerous cases have held that the failure to provide a copy of the arbitration rules to which the employee would be bound supported a finding of procedural unconscionability. [Citations.]" (*Trivedi v. Curexo Technology Corp.* (2010) 189 Cal.App.4th 387, 393, disapproved on another ground in *Baltazar v. Forever 21, Inc.* (2016) __ Cal.4th __.) Recently, however, cases have held that the incorporation of rules into the agreement without attaching them does not necessarily render the contract procedurally unconscionable. (*Bigler v. Harker School* (2013) 213 Cal.App.4th 727; *Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462 (*Peng*).) *Peng* rejected the trial court's finding that the arbitration agreement was per se procedurally unconscionable because it required the plaintiff to abide by the AAA rules but did not attach the rules or identify them with clarity. (*Id.* at pp. 1470-1472.) *Peng* distinguished *Trivedi* where, in addition to omitting to attach the AAA rules, the agreement was adhesive. (*Peng*, at pp. 1471-1472, citing *Trivedi*, at pp. 393-395.) *Peng* was also unpersuaded by *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, relied on by the trial court here, because the *Fitz* agreement " 'deliberately replaced the AAA's discovery provision with a more restrictive one, and in so doing failed to ensure that employees are entitled to discovery sufficient to adequately arbitrate their claims' " in violation of an *Armendariz* requirement. (*Peng*, at p. 1472, quoting from *Fitz*, at p. 721; accord, *Bigler*, at p. 737 [holding "absence of the AAA rules is of minor significance" and reversing

finding of procedural unconscionability between a student's parents and the prestigious private school].)[3]

Similar to *Peng*, the attributes of adhesion and oppression are absent from both contracts and the SOI agreement makes no mention of the AAA rules. Nor is there any argument that either agreement violates *Armendariz*'s minimum requirements. The Atlas agreement's sole reference to the AAA rules applies to the process for selecting and paying the arbitrator. This single reference to the AAA rules does expand applicability of those rules to the entire arbitration process.[4] Accordingly, the failure to affix the AAA

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[3] The other cases cited by Campos are also distinguished. In *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, the arbitration agreement referred to the Better Business Bureau arbitration rules but did not attach them to the contract. The plaintiff was obviously surprised because those rules precluded the plaintiff from obtaining *damages*. (*Id.* at p. 1405.) The court explained, "Here is the surprise: The customer must inevitably receive a nasty shock when he or she discovers that no relief is available even if out and out fraud has been perpetrated, or even if he or she merely wants to be fully compensated for damaged property. [¶] Here is the oppression: The inability to receive full relief is artfully hidden by merely referencing the Better Business Bureau arbitration rules, and not attaching those rules to the contract for the customer to review. The customer is forced to go to another source to find out the full import of what he or she is about to sign—and must go to that effort *prior* to signing." (*Id.* at p. 1406.) By contrast, Campos does not argue that the AAA rules have any substantive impact on her claims.

Similarly distinguished is *Gutierrez v. Autowest, Inc.*, *supra*, 114 Cal.App.4th 77, where the arbitration clause was presented in small typeface on the opposite side of the automobile lease's signature page, and there was no space for the plaintiff to initial signifying his acceptance. The plaintiff was not told that the agreement contained an arbitration clause or that he was entitled to negotiate. (*Id.* at p. 89.) Here, the arbitration clause was not hidden and the signature line was located on the same page below the arbitration clause. Vinuya reviewed the clause with Campos who knew she could ask questions.

[4] *HM DG, Inc. v. Amini* (2013) 219 Cal.App.4th 1100, does not compel the conclusion that a single reference to the AAA rules for arbitrator selection means that the entire agreement is governed by the AAA rules. The contract in *HM DG, Inc.* named three choices for appointing an arbitrator and for arbitration in accordance with "applicable" rules. (*Id.* at p. 1104.) We suggested that if the parties selected an AAA arbitrator under AAA rules, the appointment "would entail arbitration in an AAA forum under AAA rules." (*Id.* at p. 1110.) Effectively, we implied a method for curing a vague term so as not to undermine the parties' mutual consent to arbitrate and we did not

rules to the Atlas agreement is insufficient grounds for finding procedural unconscionability.

c. *Campos was not surprised by the arbitration provisions.*

The trial court's second basis for finding procedural unconscionability was that the arbitration provisions were buried within the employment agreements and written in relatively small type without emphasis. "Unfair surprise results from misleading bargaining conduct or other circumstances indicating that a party's consent was not an informed choice. [Citations.]" (*Sanchez v. Western Pizza Enterprises, Inc.* (2009) 172 Cal.App.4th 154, 173.)[5] " 'Surprise is defined as " 'the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms.' " [Citations.]' [Citation.]" (*Walnut Producers of California v. Diamond Foods, Inc.* (2010) 187 Cal.App.4th 634, 646.) As we explained in *Sanchez v. Western Pizza Enterprises, Inc.*, " ' "Unfair surprise" is a relatively easy concept to visualize. Hiding a clause in a mass of fine print trivia is one method of surprising the non-drafting party with unknown terms. Another method is to phrase the clause in language that is incomprehensible to a layman or that diverts his attention from problems raised or rights lost. A variety of deceptive sales practices and other tactics might be catalogued, but the foregoing should suffice to indicate the type of problem covered by "unfair surprise." ' [Citation.]" (*Sanchez v. Western Pizza Enterprises, Inc.*, at p. 173, fn. 10.)

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require that the rules be attached. (*Id.* at pp. 1109-1110.) Here by contrast, the Atlas agreement set forth clearly the arbitration procedures to be applied, e.g., discovery, claims and defenses, documentary evidence, testimony. No choice was provided and no mention was made of "applicable" rules. Thus, we need not infer from the single reference to the selection of an AAA arbitrator that all of the AAA rules govern arbitration under the Atlas agreement.

5 *Sanchez v. Western Pizza Enterprises, Inc., supra*, 172 Cal.App.4th 154 was abrogated in part on another ground in *AT & T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 350-351, as stated in *Iskanian, supra*, 59 Cal.4th at p. 366.

There was no surprise here. The Atlas agreement consisted of only two pages and was in Spanish. The arbitration provision was on the bottom of the second page, in four short, clear, numbered paragraphs, segregated from the rest of the contract by a large heading that read, "Employee Acknowledgment," and so the reference was not buried in a lengthy, prolix, or incomprehensible format. Just below the four arbitration paragraphs, in larger print, was the sentence acknowledging a knowing and voluntary waiver of the right to judicial resolution of claims. Moreover, the arbitration provision was not hidden on the back side of the agreement, but located immediately above the signature line. And, Vinuya made affirmative efforts to bring the arbitration provision to the attention of Campos who had the opportunity to read before signing. (See *Roman v. Superior Court*, *supra*, 172 Cal.App.4th at p. 1471 [no surprise where arbitration clause set forth in separate succinct paragraphs and located on last of seven pages underneath heading].)

Likewise, the SOI agreement's arbitration provision was not buried near the end of a ream of text. The SOI agreement consisted of only eight pages, of which four were federal forms. The arbitration provision was set out in a separate page at the end of the agreement under the heading "Employee Acknowledgment" and above the signature line. Furthermore, Vinuya advised Campos of the arbitration clause. Moreover, a significant clause, "**I and SOI mutually waive any right to a jury trial**" was highlighted in bold. Although Campos did not have a Spanish version of the SOI agreement, an interpreter was available to answer her questions when she read and signed it. (See *O'Donoghue v. Superior Court* (2013) 219 Cal.App.4th 245, 259 [arbitration "provision 'was *not* obtained by a "stealthy device" such as the burial of the provision near the end of 70 pages of text.' [Citation.] The reference provision was placed in a conspicuous location at the end of a relatively short contract"].)

As the agreements were not contracts of adhesion, were not oppressive, and did not contain surprise, they were not procedurally unconscionable. In light of our conclusion concerning procedural unconscionability, we need not address the second prong involving substantive unconscionability. (See, e.g., *Sanchez*, *supra*, 61 Cal.4th at pp. 928-929 (conc. & dis. opn. of Chin, J.)

DISPOSITION

The petition for writ of mandate is granted. The trial court is directed to vacate its June 28, 2012 order and to enter a new order granting the motion of defendant J.K. Residential Services, Inc. to compel arbitration. (Code Civ. Proc., § 1281.)

Each party to bear its own costs on appeal.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.