IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Complex Law and Motion Calendar
Judge: HONORABLE V. RAYMOND SWOPE
Department 23
1050 Old Mission Road, South San Francisco
Courtroom J

Monday, March 3, 2025

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. **EMAIL** Dept23@Sanmateocourt.org **BEFORE 4:00 P.M.** CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.

2. **YOU MUST CALL (650) 261-5123 BEFORE 4:00 P.M.** with the case name, number and the name of the party contesting.

AND

3. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

Appearances by Zoom are highly encouraged.

Zoom Video/Computer Audio Information:

https://sanmateocourt.zoomgov.com/

Meeting ID: 161 514 9089
Password: 006757

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case

3:00
LINE:1

24-CIV-01055 JORGE DIAS, ET AL. VS. ACTALENT, INC., ET AL.

JORGE DIAS	JONATHAN M. GENISH
ACTALENT, INC.	MICHAEL S. KUN

MOTION TO COMPEL ARBITRATION OF PLAINTIFFS' INDIVIDUAL CLAIMS, TO DISMISS PROPOSED CLASS CLAIMS AND TO STAY ACTION BY DEFENDANT ACTALENT, INC.

TENTATIVE RULING:

Defendant Actalent, Inc.'s ("Actalent") Motion to Compel Arbitration of Plaintiffs' Individual Claims, to Dismiss Proposed Class Claims, and to Stay the Action is GRANTED. Zoox, Inc.'s ("Zoox") Motion for Joinder in Defendant Actalent's Motion to Compel Arbitration is GRANTED.

Plaintiffs shall arbitrate the individual claims against Actalent and Zoox pled in the First Amended Complaint and the class claims are dismissed as to Actalent and Zoox. The action is as to Actalent and Zoox is STAYED pending arbitration.

Actalent's Request for Judicial Notice and Supplemental Request for Judicial Notice are DENIED, as the court finds the requested documents are not relevant. (See Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, June 2024 Update) ¶ 9:67.7: "State trial court rulings have no precedential value.")

Actalent has met its initial burden and proved by a preponderance of evidence that arbitration agreements with class action waiver provisions were entered into by the parties and the dispute is covered by the agreements. (Knight, Cal. Prac. Guide: Alt. Disp. Res. (Rutter, Dec. 2023 Update) ¶ 5:320. See Collum Dec., ¶¶ 19-20, Exs. 4, 27.) (Although there are technically two agreements, one for each Plaintiff, because the agreements are identical, this court refers only to an "Agreement.")

The Court finds Actalent has met its burden to demonstrate Labor Code section 229 is preempted by the FAA as the Agreements affects interstate commerce. (Nixon v. AmeriHome Mortgage Company, LLC (2021) 67 Cal.App.5th 934, 946. See also Chin, Cal. Prac. Guide: Employment Lit. (Rutter, Mar. 2024 Update) ¶ 11:1445.) Further, "arbitration agreements governed by the

FAA may waive classwide arbitration regardless of whether class arbitration procedures are available and despite state law finding such waivers unconscionable." (Chin at ¶ 18:621.31. See also ¶ 18:363 ("The FAA preempts California law that bars as unconscionable class arbitration waivers in employment agreements").)

Actalent provides evidence that it is "a global staffing firm with its headquarters and principal place of business located outside of California," and "provides temporary staffing services to meet the needs of their clients by hiring temporary employees for work on temporary assignments at client sites throughout the United States." (MPA, p. 16:3-7; Collum Dec., ¶ 3.) Additionally, Zoox "develop[s] autonomous vehicles that will be used throughout the United States." (MPA, p. 16:8-10.) Plaintiffs do not address this issue in their opposition. The Court finds the evidence is sufficient to demonstrate a substantial effect on interstate commerce for FAA preemption. (Giuliano v. Inland Empire Personnel, Inc. (2007) 149 Cal.App.4th 1276, 1287.)

The Court finds Plaintiffs have not met their shifting "burden of proving any defense, such as unconscionability." (Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC (2012) 55 Cal.4th 223, 236; See also Knight, supra, at ¶ 5:320.) "A court may not refuse to enforce a contract clause unless it determines that the clause is both procedurally and substantively unconscionable." (Giuliano, supra, 149 Cal.App.4th at 1292 (emphasis added).)

Plaintiffs have not demonstrated there is procedural unconscionability. The Agreement is not an adhesion contract, where Actalent provides evidence that Plaintiffs had the option not to sign the Agreement, and doing so would not have affected their hiring. (Collum Dec., ¶ 15.) Plaintiffs do not dispute this evidence, and do not provide evidence for their own claims that Actalent had superior bargaining power, or that employees were not allowed to negotiate the terms of the Agreement. (See Opp., pp. 5:23-25, 5:28-6:1.) Plaintiffs have similarly failed to demonstrate procedural unconscionability based on surprise or oppression where the Agreement is only three pages long, the font is reasonably sized so as to be legible, and Plaintiffs do not dispute that they were permitted to fill out the Agreement on their own time, with no time limit. (Collum Dec., ¶ 10.)

Plaintiffs have not demonstrated substantive unconscionability on any grounds. (See Opp. at pp. 6:18-7:5 (impermissibly broad scope); p. 7:7-20 (indefinite duration); pp. 7:21-8:3 (misleading vagaries in fee shifting standards); p. 8:5-17 (vague terms); pp. 8:19-9:14 (lack of mutuality).)

The Agreement is not overly broad in scope or duration because it limits coverage to claims arising out of Plaintiffs' employment. (See Agreement, p. 1: "Covered Claims" are those claims "arising out of and/or directly or indirectly related to [Plaintiffs'] application for employment with the Company, and/or [Plaintiffs'] employment with the Company, and/or the terms

and conditions of [Plaintiffs'] employment with the Company, and/or termination of [Plaintiffs'] employment with the Company . . . .") Plaintiffs' cited case of Cook v. Univ. of S. Cal. (2024) 102 Cal.App.5th 312 is distinguishable on these grounds.

The cases cited by Plaintiffs also do not support a finding that "misleading" information regarding attorneys' fees renders the Agreement substantively unconscionable. The Agreement states that the arbitrator "will not have authority to award attorneys' fees unless a statute or contract at issue in the dispute authorizes the award of attorneys' fees to the applicable prevailing party, in which case the Arbitrator shall have the authority to make an award of attorneys' fees to the full extent permitted by applicable law." This language clearly binds the arbitrator to the applicable statutory fee requirement. (Compare Gostev v. Skillz Platform, Inc. (2023) 88 Cal.App.5th 1035, 1061–62, review denied (June 14, 2023); Newton v. American Debt Services, Inc. 725 (N.D. Cal. 2012) 854 F.Supp.2d 712.)

Plaintiffs' arguments as to vague terms are not well taken where Plaintiffs cite to no authority in support of any of their arguments. (See Opp. at pp. 8:9-17.)

Lastly, Plaintiffs have not demonstrated substantive unconscionability based on lack of mutuality where the Agreement states that "the parties hereby forever waive and give up the right to have a judge or jury decide any Covered Claims." (Agreement, p. 1, emphasis added.)

As for the Agreement's applicability to Zoox, the Court finds that Zoox is a third-party beneficiary to the Agreement. Actalent provides evidence that Zoox is a client of Actalent. (MPA, p. 10:26-28; Lim Dec., ¶ 3; Collum Dec., ¶ 6.) The Agreement states that the claims covered by the Agreement include claims "against Actalent, Inc. and/or any of its subsidiaries, affiliates, officers, directors, employees, agents, and/or any of its clients or customers . . ." (Agreement, p. 1.) Plaintiffs refer to Actalent and Zoox as agents of one another. (FAC, ¶ 15: "Plaintiffs are informed and believe, and thereon allege, that the acts and omissions alleged herein were performed by, or are attributable to ZOOX LABS, INC. dba ZOOX, INC., ACTALENT, INC., EXPERIUS US LLC, and/or DOES 1 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf.") Plaintiffs also allege a joint relationship between Actalent and Zoox. (FAC at ¶ 16: "Defendants were the employers of Plaintiffs within the meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs…"; FAC at ¶ 18: "Defendants [Actalent and Zoox] exercised sufficient authority over the terms and conditions of Plaintiffs and the

other class members' employment for them to be joint employers of Plaintiffs and the other class members.")

This evidence is sufficient to demonstrate that Zoox is a third-party beneficiary of the Agreement and is entitled to enforce it against Plaintiffs. (See Boucher v. Alliance Title Co., Inc. (2005) 127 Cal.App.4th 262, 271; Garcia v. Pexco, LLC (2017) 11 Cal.App.5th 782, 786; Franklin v. Community Regional Medical Center (9th Cir. 2021) 998 F.3d 867, 871, 874-875.)

3:00
LINE:2

24-CIV-01055 JORGE DIAS, ET AL. VS. ACTALENT, INC., ET AL.

JORGE DIAS	JONATHAN M. GENISH
ACTALENT, INC.	MICHAEL S. KUN

MOTION FOR JOINDER IN DEFENDANT ACTALENT, INC.'S MOTION TO COMPEL ARBITRATION OF PLAINTIFF'S INDIVIDUAL CLAIMS; TO DISMISS PROPOSED CLASS CLAIMS AND TO STAY ACTION BY DEFENDANT ZOOX, INC., ERRONEOUSLY SUED HEREIN AS ZOOX LABS, INC. dba ZOOX, INC.

TENTATIVE RULING:

GRANTED. See tentative ruling on Line No. 1.

POSTED: 3:00 PM