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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

OLGA H. GARAU, Plaintiff and Appellant, v. DEPARTMENT OF INDUSTRIAL RELATIONS et al., Defendants and Respondents.	B276212 (Los Angeles County Super. Ct. No. BC483476)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. John P. Doyle, Judge. Affirmed.

Olga H. Garau, in pro. per., for Plaintiff and Appellant.

Christopher G. Jagard, Chief Counsel, Christopher Frick, Assistant Chief Counsel, Marilyn Bacon, Counsel, State of California Department of Industrial Relations, Office of the Director, Legal Unit, for Defendants and Respondents.

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Plaintiff Olga Garau (plaintiff) sued the State of California and the state agencies that had employed her as an attorney, personally negotiated and signed a written settlement agreement with those parties, cashed a $369,500 settlement check, and then refused to cash the final $5,000 settlement check unless the state defendants agreed to pay her another $750,000. At the state defendants' request, the trial court granted a motion to enforce the settlement agreement. Plaintiff now appeals. Her appeal lacks any merit whatsoever, so we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Plaintiff worked as an attorney for the Division of Occupational Safety and Health (DOSH), a division within the State of California's Department of Industrial Relations (Department).

Plaintiff thereafter initiated litigation in two fora. She sued the State of California (State), the Department, and DOSH (collectively, defendants) in court for (1) wrongful termination, disability discrimination, and retaliation under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.); (2) breach of various statutory duties; and (3) breach of contract (the civil lawsuit). She also initiated administrative proceedings against the State, the Department, and the State Compensation Insurance Fund for workers' compensation benefits (the workers' compensation case). Plaintiff represented herself in both proceedings.

In July and August 2015, plaintiff personally engaged in settlement negotiations. In late September 2015, plaintiff and the Department's Chief Counsel signed a written settlement agreement (Settlement) that "global[ly]" resolved both pending

matters. Under the terms of the Settlement, (1) defendants agreed to pay plaintiff $374,500; (2) plaintiff agreed to (a) "dismiss" the civil lawsuit "with prejudice," (b) treat the payment as a "full and final settlement" of the workers' compensation case, and (c) resign from her employment; (3) plaintiff and defendants agreed that the Settlement constituted "a full and final settlement of all of the claims and actions arising from [plaintiff's] employment with defendants," and thus agreed to "release and forever discharge each other . . . [for] any act or omission related to [plaintiff's] employment by defendants"; (4) defendants agreed to pay the $374,500 in two checks, and to "allocate[] and characterize[]" $5,000 as the settlement amount for the civil lawsuit and the remaining $369,500 for the workers' compensation case; and (5) the parties agreed that plaintiff would receive the checks "within 90 days of the date the Parties sign this Agreement," which they believed was enough time for defendants to obtain the necessary approvals from a Workers' Compensation Administrative Law Judge (for settlement of the workers' compensation case) and from the Labor and Workforce Development Agency and California Department of Finance (for settlement of both matters).

Defendants issued plaintiff the two checks in January 2016, more than 90 days after the Settlement was signed by plaintiff and the Department's Chief Counsel. The delay was due in part to plaintiff's refusal, until she signed the Settlement, to sign a medical authorization for release of information necessary to process the Settlement, and in part to the delay in finalizing and signing the Compromise and Release Agreement also necessary to process the Settlement. Defendants informed plaintiff that the checks would be late, and she did not object to

the delay and indicated her intention to proceed with the Settlement despite the Department's noncompliance with the Settlement's 90-day requirement.

Plaintiff cashed the $369,500 check. However, she refused to cash the $5,000 check, electing to "hold onto it" and to demand another $750,000 from defendants before she would dismiss the civil lawsuit.

II. Procedural Background Pertinent to This Appeal

In February 2016, defendants filed a motion to enforce the Settlement pursuant to Code of Civil Procedure section 664.6,[1] as specifically contemplated by the Settlement. Plaintiff opposed the motion, arguing that the Settlement was invalid because (1) the Department's Chief Counsel lacked the authority to sign the Settlement; (2) the Settlement constituted an illegal waiver of statutory rights under Civil Code section 3513; (3) the Settlement was unconscionable, in part because the allocation of only $5,000 to the civil lawsuit was "grossly inadequate" to compensate her for her FEHA claims; (4) defendants got the checks to her late; (5) defendants never filed a notice of settlement pursuant to California Rules of Court, rule 3.1385; and (6) the $5,000 settlement check listed the word "vendor" beside her name, which was "false" because she was really a victim.

On May 16, 2016, the trial court granted defendants' motion and entered judgment dismissing plaintiff's civil lawsuit. Specifically, the court ruled that (1) the Department's Chief Counsel had authority to sign the Settlement on behalf of defendants; (2) the Settlement did not unlawfully waive plaintiff's statutory rights; (3) the Settlement was not

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

unconscionable, in part because the "allocation" of just $5,000 in damages to the civil lawsuit "was due to plaintiff's concerns"; and (4) plaintiff was equitably estopped from denying the Settlement's efficacy when she accepted 98.6 percent of its value by cashing the $369,500 check.

Plaintiff thereafter filed a motion for reconsideration, a motion for new trial, and motion to vacate the trial court's judgment of dismissal. The trial court ruled that it lacked jurisdiction to entertain the motion for reconsideration and denied plaintiff's remaining motions.

On July 14, 2016, plaintiff filed a notice of rescission of the disputed settlement. The same day, she filed a notice of appeal challenging (1) the trial court's order dismissing the civil lawsuit, and (2) the denial of her posttrial motions.

DISCUSSION

I. Appeal of Order Dismissing Civil Lawsuit

The first part of plaintiff's appeal challenges the trial court's order enforcing the Settlement pursuant to section 664.6 and dismissing the civil lawsuit with prejudice. Section 664.6 empowers a court, if the parties so agree, to "retain jurisdiction over the parties to enforce [a written] settlement until performance in full of the terms of the settlement." (§ 664.6.) A court enforcing a settlement may not "'create [new] material terms of [the] settlement,'" but may "'decid[e] what terms the parties themselves have previously agreed upon.' [Citation.]" (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 983-984 (*J.B.B. Investment*).) We review a court's order enforcing a settlement agreement under section 664.6 de novo (*Weinstein v. Rocha* (2012) 208 Cal.App.4th 92, 96), but review any factual findings made by the court for substantial evidence

(*J.B.B. Investment*, at p. 984). Evidence is "substantial" if ""'a rational trier of fact could find [the evidence] to be reasonable, credible, and of solid value'"" and, in assessing the substantiality of the evidence, we must ""'view[] the evidence in the light most favorable to the [decision.]" [Citation.]'" (*Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency* (2016) 1 Cal.App.5th 1084, 1106.)

A. Trial Court's Jurisdiction

Plaintiff first asserts that the trial court was without jurisdiction to enter its May 2016 order and judgment because, at that time, her appeal challenging the trial court's imposition of monetary sanctions in May 2015 was pending before the Court of Appeal.[2] To be sure, "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from," but the stay reaches only "the matters embraced therein or affected thereby." (§ 916, subd (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189.) Generally, "an order imposing [monetary] sanctions on an attorney" is separately "appealable as a final order on a collateral matter directing the payment of money." (*Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 975-976, superseded on other grounds by § 904.1.) More specifically to this case, nothing in plaintiff's appeal of monetary sanctions imposed a year before the trial court's section 664.6-based dismissal order—and, indeed, eight months before defendants even requested such an order—

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2 Plaintiff requests that we take judicial notice of the court records in that appeal and another of her prior appeals (*Garau v. Department of Industrial Relations* (Apr. 30, 2015, B257958) [nonpub. opn.].) We grant that request. (Evid. Code, §§ 452 & 459.)

"embrace[s]" or "affect[s]" the validity of the subsequent section 664.6 order. As a result, the court was not without jurisdiction to conduct those proceedings.

B. The Merits

Plaintiff makes passing reference to six different challenges to the trial court's order in her opening brief before explaining that she "ran out of time" to provide further or more detailed briefing.[3] She goes on to raise another six issues for the first time in her reply brief.[4] Because issues raised for the first time in a reply brief are waived (*Raceway Ford Cases* (2016) 2 Cal.5th 161, 178), as doing so is "unfair to the other parties[] who lack an

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3 Plaintiff mentions a seventh issue in her opening brief—namely, that the Department never refuted the notice of rescission she filed on the same day she filed her notice of appeal for this appeal. Not only does this issue fall outside the notice of appeal (*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 304 ["'Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from'"]), but the trial court took no action on her notice of rescission, which leaves nothing for her *to* appeal in this regard.

4 Those issues are: (1) the State has forfeited any opposition to plaintiff's appeal because its name does not appear on the cover page or signature block of the Respondents' Brief; (2) the Settlement is invalid because the Workers' Compensation Administrative Law Judge did not *file* his written approval of the Settlement; (3) the Settlement is invalid because no one signed it for the State; (4) the Settlement was not really a "global" settlement and was more of a smorgasbord offer that allowed plaintiff to pick and choose which parts she wanted to accept; (5) the Settlement is unlawful under Civil Code section 3513; and (6) "sanctions, discovery privileges, and other procedural issues" somehow invalidate the Settlement.

opportunity to respond" (*People ex rel. Feuer v. Superior Court* (2015) 234 Cal.App.4th 1360, 1384), we decline to consider the issues she waived. We consider each issue properly before us.

First, plaintiff argues that the Settlement is unconscionable. """[U]nconscionability . . . refers to "'an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.'"""" (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243.) Consequently, the doctrine of unconscionability requires proof of *both* procedural unconscionability and substantive unconscionability; the more of one that exists, the less of the other must exist for a contract to be declared invalid due to unconscionability. (*Id.* at pp. 1243-1244.) Procedural unconscionability is assessed along a "'spectrum'": At one end are "'contracts that have been freely negotiated'"; at the other are "'[c]ontracts of adhesion that involve surprise or other sharp practices.'" (*Id.* at p. 1244.) Substantive unconscionability exists when a contract's terms are themselves "'overly harsh'" or "'so one-sided as to "shock the conscience"'"; however, it is not enough to show that the contract is "'a simple old-fashioned bad bargain.'" (*Ibid.*)

The trial court did not err in concluding that the Settlement is neither procedurally nor substantively unconscionable, and the court's factual findings supporting those conclusions are supported by substantial evidence.

The Settlement is not procedurally unconscionable because plaintiff negotiated the contract herself, and thus was aware of all of its terms; there was no "surprise." Plaintiff asserts that her personal medical and financial situation put pressure on her to

settle rather than go to trial, but the court correctly found that her situation existed independent of anything the defendants did.

The Settlement is not substantively unconscionable because the terms are evenly balanced: Plaintiff got a $374,500 payment and a promise to expunge her personnel records of negative comments in exchange for dismissing the civil lawsuit and her workers' compensation case and as well as for resigning. Plaintiff urges that the Settlement is grossly unfair because only $5,000 of the payment was allocated as damages for her civil lawsuit. But there was evidence that *plaintiff* was the one who requested that allocation, and she cannot now use it as a basis for keeping more than 98 percent of the settlement proceeds while disclaiming any duty to uphold her end of the bargain. Plaintiff points to the fact that she disputes being the one who allocated the money between the two pieces of litigation, but we must draw all inferences in favor of the trial court's factual findings, not reweigh them. (*County of Orange v. Cole* (2017) 14 Cal.App.5th 504, 509.)

Second, plaintiff contends that the Settlement may not be enforced under section 664.6 because the Department's Chief Counsel who signed the Settlement is just the lawyer representing the Department, and, as such, is incapable of signing the Settlement on behalf of the Department under *Levy v. Superior Court* (1995) 10 Cal.4th 578, 586. She is wrong. *Levy* holds that section 664.6 limits a trial court's power to enforce a settlement agreement to those agreements signed by "the litigants themselves," not "their attorneys of record." (*Ibid.*) However, where a party *authorizes* someone to serve as their representative, that representative may sign on the party's behalf and that signature is valid under section 664.6. (*Provost*

v. Regents of University of California (2011) 201 Cal.App.4th 1289, 1296-1297.) Here, the Department's Chief Counsel stated he was authorized to sign the global agreement on the defendants' behalf, and plaintiff agreed in the Settlement itself that "each of their respective" representatives is authorized to "execut[e]" the Settlement "and has [the] full authority to settle" both the civil lawsuit and the workers' compensation case. This constitutes substantial evidence supporting the trial court's finding that the Chief Counsel had the requisite authority to sign the Settlement and that it is enforceable through section 664.6.

Third, plaintiff asserts that the Settlement is invalid because the defendants never filed a notice of settlement pursuant to California Rules of Court, rule 3.1385 (Rule 3.1385). That rule requires "each plaintiff or other party seeking affirmative relief" to file a notice (Rule 3.1385(a)); it does not require *a defendant* to file such a notice. In her reply brief, plaintiff responds that *she* was not required to file any such notice because there was no valid settlement, which is flatly inconsistent with her initial argument that there *was* a settlement that became invalid due to defendants' failure to file a notice. Even if we ignore the inconsistency, Rule 3.1385 is "a case management tool for delay reduction" meant to assist courts in sorting the inactive cases from the active cases (*Irvine v. Regents of University of California* (2007) 149 Cal.App.4th 994, 1001); nothing in its terms or in this purpose supports a rule that noncompliance voids a settlement.

Fourth, plaintiff asserts that the Settlement is invalid because it violates Government Code section 1364. That section makes it "unlawful to remove a person from an office or position of public trust" for reasons other than "tests and qualifications

provided for under civil service and retirement laws." (Gov. Code, § 1364.) Plaintiff's assertion is unsupported by any factual or legal citation or any argument; as a result, she has forfeited it. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1247-1248.) Further, nothing in this provision precludes a defendant from entering into a bona fide settlement of an employment dispute; if it did, it would preclude any and all such settlements.

Fifth, plaintiff contends that the Settlement is not enforceable because one of its conditions precedent—namely, the issuance of the checks within 90 days of the Settlement's execution—was not met. Although the failure of a condition precedent can invalidate a contract (*Kadner v. Shields* (1971) 20 Cal.App.3d 251, 268 ["the burden is on the party maintaining the effectiveness of a contract . . . to plead and prove the occurrence of the condition precedent"]; *Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 202 ["'A settlement agreement is a contract'"]), substantial evidence supports the trial court's finding that plaintiff waived compliance with this requirement when she was informed that the checks would be late, did not object to this development, and proceeded to cash the check representing the lion's share of the Settlement. (Accord, *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 486-487 ["estoppel arises from prior conduct by the asserting party that is somehow at odds with a point now sought to be asserted in litigation"].)

Lastly, plaintiff argues that this Court, in the separate appeal of the monetary sanctions order, improperly characterized the trial court's subsequent orders as rendering the sanctions order moot by "vacating" the sanctions, when, in fact, the trial

court had "waived" the sanctions. This has no bearing on the propriety of *this* appeal.

II. Appeal of Postjudgment Orders

The second part of plaintiff's appeal challenges the trial court's denial of her three postjudgment motions: (1) her motion for reconsideration; (2) her motion for a new trial; and (3) her motion to vacate the judgment. The trial court's denial of her motion for reconsideration was appropriate because such motions do not lie from a *judgment*. (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 182.) Defendants argue that we may affirm the trial court's denial of her motion for a new trial on the ground that it was not timely filed, but her *notice* of motion for a new trial was timely filed within 15 days of notice of entry of judgment. (§ 659, subd. (a)(2).) We review the trial court's denial of plaintiff's motion for a new trial de novo (*Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 693-694) and its denial of a motion to vacate for an abuse of discretion (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1077).

Because plaintiff's arguments in support of her posttrial motions mirror those challenging the trial court's underlying judgment, and because we have rejected all of her properly presented arguments regarding the underlying judgment, we affirm the denial of her posttrial motions.[5]

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5 In light of this disposition, we have no occasion to consider whether equitable estoppel bars plaintiff's entire appeal. We accordingly deny as moot defendants' motion to dismiss this appeal.

DISPOSITION

The judgment and orders are affirmed. Defendants are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.