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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

JESUS MENDOZA, Plaintiff and Respondent, v. CENTURY FAST FOODS, INC., Defendant and Appellant.	B267158 (Los Angeles County Super. Ct. No. BC557321)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Elihu M. Berle, Judge. Affirmed.

Fisher & Phillips, Lonnie D. Giamela and Sarina Saluja for Defendant and Appellant.

Matern Law Group, Matthew J. Matern, Dalia Khalili and Roy K. Suh for Plaintiff and Respondent.

Plaintiff and respondent Jesus Mendoza filed a class action complaint against his former employer, defendant and appellant Century Fast Foods, Inc. (Century). The case alleged that Century violated various wage and work condition requirements prescribed by the Labor Code, and included claims for relief authorized under the Private Attorney General Act (PAGA; see Lab. Code, § 2698 et seq.). Century filed a motion to compel Mendoza to arbitrate his workplace claims individually, and not in any class or other representative capacity on behalf of other Century employees. Century's motion was based on an arbitration provision included in an employment application form that Mendoza had filled out and signed in seeking work with Century. The trial court denied Century's motion to compel arbitration. Century appeals. We affirm.

FACTS

Background

Taco Bell Corp. is a fast food company headquartered in Irvine. Taco Bell Corp. is not a named defendant in Mendoza's pending action in the trial court, nor is it a party to Century's present appeal. Century is Mendoza's former employer, and "is a Taco Bell [Corp.] franchisee that operates several restaurants under the Taco Bell name."

On April 4, 2012, Mendoza sought employment at one of the restaurants operated by Century as a Taco Bell franchisee.[1] A worker behind the counter handed Mendoza a two-page employment application form. Mendoza filled out and signed the employment application form and returned it. No person affiliated with Century counter-signed the employment application form.

The employment application form had several features that are relevant for purposes of Century's appeal. Printed at the very top of the first page of the employment application form is a Taco Bell logo or trademark and the name "Taco Bell Corp. (Taco Bell)." For ease of presentation, we will refer to this employment application form as the "Taco Bell application form." In a declaration filed by Century's controller in support of

[1] The record is vague as to whether Mendoza appreciated any practical or legal difference between Taco Bell Corp. and its franchisee, Century, at the time he sought a job at the restaurant.

the company's motion to compel Mendoza to arbitrate his workplace claims against the company, Century explained how it came to use the Taco Bell application form as follows: "The form [signed by Mendoza] was originally prepared by franchisor Taco Bell Corp., and provided to Century . . . for its optional use as a franchisee." Century's corporate name does not appear on the employment application form that Mendoza signed.

At the bottom of the second page of the Taco Bell application form is a section which has a blackened header with language that reads as follows: "AGREEMENT. Please read, sign and date below." The text of the "AGREEMENT" is in a markedly smaller font than other parts of the Taco Bell application form. The "AGREEMENT" includes the following provisions, immediately above the designated line for the job applicant's signature:

> "Nature of My Employment. *If I am hired by TACO BELL*, I agree that I will be an at-will employee, which means that either I *or TACO BELL* may end my employment at any time, with or without cause or notice. I agree that no written materials or verbal statements *by TACO BELL* will constitute an expressed or implied contract of continued employment and that this at-will relationship can only be modified in writing *by TACO BELL's President*. I agree that, *if hired*, I will obey *TACO BELL's rules* . . . .
>
> "My Participation *in TACO BELL's* Drug Free Environment. I am not a current user of illegal drugs, and I agree I will never work under the influence of drugs or alcohol.
>
> "My Records and References. There is nothing in my background that would cause a risk *to TACO BELL's* customers, employees, or property. I authorize *TACO BELL* to conduct reference checks, criminal and driving record checks, and other consumer report investigations. I release all parties from any liability from providing such information *to TACO BELL* in this regard. I understand that conviction of a crime will not

necessarily disqualify me from consideration for employment. I understand that the nature and date of the offense and the relevance of the offense to the position(s) applied for will determine my eligibility for employment.

"Information Certification. I certify that the information I have provided *to TACO BELL* is true and complete. I agree to notify *TACO BELL* immediately if I am later charged with any of the crimes listed above (or if I am a delivery driver) with a driving offense. I agree that any false information or omission allows *TACO BELL* to refuse to hire me, or to terminate me at any time.

"Agreement to Arbitrate. Because of the delay and expense of the court systems, *TACO BELL and I* agree to use confidential binding arbitration, instead of going to court, for any claims that arise between *me and TACO BELL, its related companies*, and/or their current or former employees. Without limitation, such claims would include any concerning compensation, employment including, but not limited to, any claims concerning sexual harassment or discrimination, or termination of employment. Before arbitration, I agree (I) first to present any such claims in full written detail *to TACO BELL*, (II) next, to complete *any TACO BELL* internal review process; and (III) finally, to complete any external administrative remedy (such as with the Equal Employment Opportunity Commission). In any arbitration, *the then prevailing employment dispute resolution rules* [*sic*] *of the American Arbitration* [*sic*] will apply, except *that TACO BELL* will pay the arbitrator's fees, *and TACO BELL* will pay that portion of the arbitration filing fee in excess of the similar court filing fee had I gone to court." (Italics added.)

On April 10, 2012, Century hired Mendoza. As part of the hiring process, Century directed Mendoza to fill out and sign a "number of employment documents," including a W-4 income tax withholding form, a grooming and uniform policy, and a "Team Member Code of Conduct." In addition, both Mendoza and a Century regional general manager

signed another document entitled "At-Will Employment" which set forth the company's "Employment At-Will Policy" for his job with Century. We refer to this latter document as the "At-Will Contract."

Unlike the Taco Bell application form discussed above that Mendoza unilaterally signed, the At-Will Contract signed by both Mendoza and the Century regional general manager is different in several respects. Century's name is written across the top in a black header, and Century's name is used throughout the text of the document. As relevant to the dispute over arbitration in this case, the At-Will Contract includes a provision reading as follows:

"Only the Executive [*sic*] of Century . . . has the authority to: [¶] Enter any agreement for employment for any specified period of time, or [¶] *Change any of the at-will employment policies described here*." (Italics added.)

The At-Will Contract does not contain an arbitration provision, nor does it include any language explicitly superseding or incorporating the arbitration provision in the Taco Bell application form discussed above.

The Motion to Compel Arbitration

In September 2014, Mendoza filed a class action against Century; he did not name Taco Bell Corp. as a defendant. Mendoza's complaint alleged multiple causes of action involving workplace claims as to Century. For example, Mendoza alleged that Century failed to provide its employees with meal periods and rest periods and failed to pay minimum and overtime wages as required by the Labor Code. In November 2014, Mendoza filed a first amended complaint that alleged much the same wage and working condition claims against Century as in his original pleading.

In July 2015, Century filed a motion to compel Mendoza to arbitrate his claims individually and not in any representative capacity on behalf of any other Century employees. Century's motion was based on the arbitration provision noted above in the Taco Bell application form that Mendoza had signed when he applied for a job at Century's restaurant. Century's primary argument in its motion to compel Mendoza to arbitrate was that the trial court had ruled in an earlier, separate case that the arbitration

provision in the Taco Bell application form was not unconscionable. In short, Century argued for enforcement of the arbitration against Mendoza because the trial court had "already enforced" the arbitration provision against a plaintiff in another action known as the *Ruiz* matter. (See *Ruiz v. Century Fast Foods, Inc*. (L.A. Super. Ct., case No. BC550653.)

In August 2015, Mendoza filed an opposition to Century's motion to arbitrate.[2] Mendoza argued that the arbitration provision in the Taco Bell application form was not enforceable because Century had presented no evidence that he had assented to arbitrate disputes between him and Century. Mendoza argued that Century was not an identified party in the arbitration provision in the Taco Bell application form that he had signed because Century's name was not on it.[3]

In a reply, Century argued that it was a party encompassed within the meaning of the term "TACO BELL [and] its related companies" as that term was used in the arbitration provision in the Taco Bell application form.

The parties argued Century's motion to compel to the trial court. During exchanges with the lawyers on both sides, the court noted that the term "related companies" was not defined anywhere in the Taco Bell application form. Century's counsel argued: "It's simply an interpretation of what that means. There's no language in it . . . [.] [The facts are] that Century Fast Foods utilized this application, gave it to Mr. Mendoza. Mr. Mendoza filled it out, read the agreement to arbitrate, and then executed the application. . . . [A]nd . . . Taco Bell gives this application to its franchisees for the purposes of usage." The parties and the trial court also discussed the *Ruiz* matter we referenced briefly above. In *Ruiz*, the court had issued an order in February 2015 granting a motion to compel arbitration by Century pursuant to the same arbitration

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[2] At about the same time that he filed his opposition to Century's motion to compel arbitration, Mendoza filed an administrative charge against Century with the National Labor Relations Board (NLRB). We discuss Mendoza's NLRB charge below.

[3] Mendoza offered further grounds against being compelled to arbitrate. We discuss the other grounds raised by Mendoza below.

provision in the same Taco Bell application form. In *Ruiz*, the court had ordered the plaintiff to arbitrate her claims, leaving for the arbitrator the issues of whether class claims would be allowed in the arbitration.[4]

The trial court took a short recess to review its decision in the *Ruiz* matter. After the break, the court stated that it had determined that the issue of the meaning of the term "related companies" as used in the arbitration provision in the Taco Bell application form "was never addressed in *Ruiz* . . . ," and, therefore, that its decision in *Ruiz* would have no precedential or persuasive value for its decision in Mendoza's case. At the end of the hearing, the court ruled that Mendoza would not be compelled to arbitrate his claims against Century for the following stated reasons:

> "In this case, the defendant is Century Fast Food dba Taco Bell. There is no reference to Century Fast Food in the purported [arbitration] agreement that defendant has come forward with. There's no evidence that's been submitted that Century Fast Food, although it's a franchisee, is encompassed within the terms of 'related company.' It's not an affiliate in the sense of being a subsidiary corporation, a parent corporation, or a sister corporation; so at this point, based upon the agreements that have been submitted by [Century], the court does not find that [Century] has maintained its burden of proof. Specifically, the court finds [Century] has not maintained its burden of proof to demonstrate an agreement to arbitrate between [Century and Mendoza], and, therefore, the court is going to deny the motion to compel arbitration."

The trial court's minute order is in accord with its stated reasons. The minute order reads: "The Court finds that Defendants have not met their burden of proof to demonstrate Plaintiff agreed to arbitration."

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[4] The Honorable Elihu M. Berle was the trial judge in the *Ruiz* matter and in Mendoza's current case.

DISCUSSION

I. Generally Applicable Legal Principles

Notwithstanding California's strong public policy in favor of arbitration (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9), a party can be compelled to arbitrate a claim only when the party has contractually agreed to give up the right to a trial. (See *Westra v, Marcus & Millichap Real Estate Investment Brokerage Co., Inc*. (2005) 129 Cal.App.4th 759, 763; and *Victoria v. Superior Court* (1985) 40 Cal.3d 734, 739.) As Division One of our court has stated: "The 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. [Citation.]" (*Benasra v. Marciano* (2001) 92 Cal.App.4th 987, 990.)

"General principles of contract law determine whether the parties have entered a binding agreement to arbitrate. [Citation.] This means that a party's acceptance of an agreement to arbitrate may be express [citations] or implied-in-fact . . . [citations]." (*Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 420.) In short, "the lack of a perfected written arbitration agreement does not conclusively establish the absence of an agreement to arbitrate." (*Basura v. U.S. Home Corp*. (2002) 98 Cal.App.4th 1205, 1216.) We state the rule still another way: the issue of whether the parties actually gave their mutual assent to an arbitration agreement is generally a mixed question of fact and contract law.

In *Donovan v. RRL Corp*. (2001) 26 Cal.4th 261, our Supreme Court explained the principles governing mutual assent for contract formation as follows: "An essential element of any contract is the consent of the parties, or mutual assent. [Citations.] Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror. [Citations.]" (*Id*. at pp. 270-271.) In short, proof of a contract requires a showing that the parties agreed "to the same thing in the same sense." (Cf. *Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50, 60 [examining whether substantial evidence showed the existence of an implied in fact contract to arbitrate workplace disputes based on employer's adopted arbitration

policies and its employees' continued employment, and ruling that the employer failed to establish that arbitration procedure it presented to the court was the procedure to which the employees agreed by their conduct].)

When a party resists arbitration based on the ground that no governing agreement to arbitrate exists, a court must consider that claim. (See *Bruni v. Didion* (2008) 160 Cal.App.4th 1272, 1283-1284.) When such a claim is at issue, the party that is seeking to compel arbitration has the burden to prove a governing arbitration agreement by a preponderance of the evidence. (See *Esparza v. Sand and Sea, Inc*. (2016) 2 Cal.App.5th 781, 787; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) Stated in other words, a party's motion to compel arbitration is essentially a suit in equity to compel specific performance of a contract to arbitrate. (See *County of Contra Costa v. Kaiser Foundation Health Plan, Inc*. (1996) 47 Cal.App.4th 237, 245.)

Here, Century's briefs on appeal expressly acknowledge that it did not offer a job to Mendoza when it handed him the Taco Bell application form. Century's stated proposition as to the formation of an arbitration agreement, is as follows: By submitting the filled-out and signed Taco Bell application form to Century, (1) Mendoza made an offer to provide his work services to the company, including an offer to arbitrate any workplace claims that might thereafter arise against Century, and (2) Century manifested its acceptance of Mendoza's offer, including the offer to arbitrate, by hiring him. With this proposition in mind, we turn to Century's arguments on appeal.

II. The Meaning of the Arbitration Provision — Proof of an Agreement to Arbitrate Between Mendoza and Century

Century contends the trial court's decision to deny the company's motion to compel Mendoza to arbitrate must be reversed because Taco Bell Corp. and Century must be considered "related companies" within the meaning of the arbitration provision. Century apparently argues that the language "TACO BELL [and] its related companies" in the arbitration provision in can reasonably be construed to have meant *only* one thing, namely, "TACO BELL and its related companies, including its franchisees," such as Century. Given this interpretation, Century argues it incontrovertibly follows that

Century proved an agreement to arbitrate between Mendoza and Century concerning any workplace claims that arose from his employment with the company. As a result, the trial court erred in finding that the company did not meet "burden of proof to demonstrate [the Mendoza had] agreed to arbitration." We find no error in the trial court's ruling.

Century's opening brief cites a number of cases, none in the context of an arbitration agreement in the workplace, to show that the term "related companies" has been legally interpreted by certain courts to include franchisees. Mendoza's respondent's brief offers citations to a number of cases, also none truly in the context of an arbitration agreement in the workplace, to show that the term "related companies" has been legally interpreted by certain courts not to include franchisees. Such cases generally recognize that a franchisee is a business format design in which it is intended that the franchisee operate as a separate company from the franchisor, basically under a licensing-type relationship. Given the parties' competing legal citations, it is plain that the term "related companies" must be viewed, as the trial court correctly noted, to be ambiguous as it is susceptible to more than one reasonable interpretation.

Of course, none of the competing case citations offered by the parties are truly helpful in determining whether an arbitration agreement was formed here because none of the cases discuss what a lay person such as Mendoza, in applying for a job at a fast food restaurant, would have or should have understood the term "related companies" to mean. One of the primary cases cited by Century in support of its argument that the term "related companies" in the arbitration provision in the Taco Bell application form must be interpreted to mean — as the term was "offered" by Mendoza to the company —a franchisor and its franchisee is the Supreme Court's recent opinion in *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474 (*Patterson*). We are not persuaded.

In *Patterson*, a employee sued her employer, a franchisee, as well as the franchisor, for sexual harassment in the workplace. The trial court granted summary judgment in favor of the franchisor. The Court of Appeal reversed, finding that a reasonable inference could be drawn from the record that the franchisee "lacked managerial independence," which meant that there were triable issues of fact as to

whether the franchisor had acted in the role of the plaintiff's employer. (*Patterson, supra,* 60 Cal.4th at p. 488.) The Supreme Court reversed the court of appeal, ruling there was no evidence to support a finding of an employment or agency relationship between the franchisor and the employee. (*Id*. at p. 503.) In coming to this conclusion, the Supreme Court initially examined the nature of the franchisor-franchisee relationship, and ultimately observed: "[W]e cannot conclude that franchisee operating systems *necessarily* establish the kind of employment relationship that concerns us here. A contrary approach would turn business format franchising 'on its head.' [Citation.]" (*Id.* at p. 499.) The court then reviewed the evidence and found that it did not show that the franchisor had engaged in the day-to-day management practices of an employer. (*Id*. at pp. 499-503.) *Patterson* truly has little, if anything, to do with how the term "related companies" in a particular contract offer should be interpreted. Rather, *Patterson* supports the proposition that, in order to hold a particular defendant liable on a claim for sexual harassment in the workplace, there must be some evidence showing that the defendant actually acted in such a manner as to assume the role of the employer.

Century's reliance on a series of trademark cases under the Lanham Act (see 15 U.S.C. § 1051 et seq.) is no more persuasive. The Lanham Act established a national system of trademark registration that protects owners of registered marks against the use of similar marks where such use is likely to result in consumer confusion, or the dilution of a known mark is likely to occur. Section 1055 of the Lanham Act uses the statutory language "related companies" as follows: "Where a registered mark or a mark sought to be registered . . . may be used legitimately *by related companies,* such use shall inure to the benefit of the registrant . . . , and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public." (15 U.S.C. § 1055, italics added.)

Century cites a number of cases to show that federal courts have interpreted the meaning of the statutory language "related companies" as used in the Lanham Act to include franchisees. However, these cases do not resolve with the meaning of the words

"related companies" as used in a contract offer to arbitrate found in a job application form.

Century's arguments do not support the proposition that job applicants at a fast food restaurant should be charged, as a matter of law, with knowing how the term "related companies" in the Lanham Act has been interpreted, or that such applicants should be charged with having made an offer to arbitrate that is consistent with such an interpretation. None of the cases cited by Century suggest that franchisors and franchisees operate under a custom, generally known to job applicants, of using the phrase "related companies" when referring to one another in agreements connected with those job applicants. As the trial court correctly found, Century's motion to compel arbitration did not prove up that Mendoza understood the term "related companies" in the arbitration provision in the Taco Bell application form was meant to encompass both Taco Bell Corp. and Century, as a "related company" of Taco Bell Corp. We see no evidence in the record showing that anyone affiliated with Century communicated to Mendoza that the term "related companies" as used in the arbitration provision in the Taco Bell application form was meant to include Century, such that, when Mendoza submitted his "offer" to arbitrate, it could be said that he was offering to arbitrate with Century.

In Century's motion to compel arbitration, this is how Sheila Cook, Century's controller, explained Century's understanding of the arbitration provision in the Taco Bell application form: "The [Taco Bell application] form was originally prepared by franchisor Taco Bell Corp. and provided to Century . . . for its optional use as a franchisee." There is no further explication of the history of the drafting of the arbitration provision or of the drafters' intended meaning in using the term "related companies." Granted, Century's history and practical use of the arbitration provision is demonstrated by the showing that it had been enforced in the *Ruiz* matter. However, the record shows that the meaning of the arbitration provision was not litigated in the *Ruiz* matter. And, of course, there is no evidence in any event showing that Mendoza knew about the *Ruiz* matter at the time he signed the Taco Bell application form.

Further, assuming that Century had its own unilateral understanding that the arbitration provision in the Taco Bell application form was intended to encompass Century as a related company of Taco Bell, this does not show that Mendoza understood the same at the time he submitted his "offer" to arbitrate via the Taco Bell application form.[5] This is where we believe the trial court's burden of proof conclusion comes into play.

Given the ambiguity in the arbitration provision in the Taco Bell application form, the burden plainly fell on Century to prove up Mendoza's understanding of his "offer" to arbitrate, such that the company "accepted" Mendoza's offer. (See, e.g., *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126 [where the terms in a written instrument are ambiguous, courts consider extrinsic evidence in determining the intention of the parties].) Here, due to the ambiguity in the arbitration provision in the Taco Bell application form that Century used, and due to Century's failure to offer evidence showing Mendoza's understanding of the arbitration provision, we can find no error in the trial court's ruling that Century did not meet its "burden of proof" to demonstrate that Mendoza agreed to arbitration.

Finally, we reject Century's argument that Mendoza's NLRB charge (see footnote 2, *ante*) necessarily defeats any resistance that he has to the enforcement of the arbitration provision in the Taco Bell application form. Mendoza's NLRB charge, which is a pre-printed, fill-in-the-blanks, official government form, listed both Taco Bell Corp. and Century where the form asked for the "name [of his] employer." Century argues the listing of both Taco Bell Corp. and Century amounted to a binding admission of sorts that both entities were, in fact, Mendoza's "joint employers." Century argues this admission

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[5] In his declaration in opposition to Century's motion to compel arbitration, Mendoza testified among other matters as follows: "I never intended to enter into an arbitration agreement with Taco Bell Corp. or [Century] when I signed the Taco Bell Corp. employment application. At no time before I signed the application did anyone from Taco Bell Corp. or [Century] tell me that by signing the application, I would be entering into an arbitration agreement with Taco Bell Corp. or [Century.]" Further: " . . . I simply thought I was applying for a job at the Restaurant."

"directly contradicts" Mendoza's position in opposing the company's motion to compel arbitration that Century is not a "related company" as that term is used in the arbitration provision in the Taco Bell application form. We do not find Century's argument persuasive.

First, Century did not raise any issue as to Mendoza's NLRB charge in the trial court, and we see no reason to entertain Century's attempt to raise the issue for the first time on appeal.

Second, we fail to see the direct contradiction that Century sees. The predominant stated "basis" (the fill-in-the-blank form's term) for Mendoza's NLRB charge was that an employer's practice of using a mandatory, pre-dispute arbitration provision in an employment application form amounts to interference with employees' rights to engage in "concerted activity" that is protected by the National Labor Relations Act (NLRA). We do not see that such an NLRB charge necessarily contradicts any issue involved in the proceedings to determine whether an arbitration agreement was formed between Mendoza and Century. The issue of whether Century, as a franchisee, was intended to be included within the meaning of the term "related companies" in the arbitration provision in the Taco Bell application form is a distinct issue from the issue of whether Taco Bell Corp. and or Century, separately or together, in the role of an employer, engaged in acts that violated the NLRA.

Lest there be any misunderstanding, we do not hold in this case that the term "related companies" in a written instrument can never include a franchisee. Indeed, we do not even hold that the term "related companies" in the Taco Bell application form, as a matter of contractual interpretation on its face, must be read to *necessarily exclude* Century. We hold only that we agree with the trial court in this case that Century did not prove in this case that it was *intended by the mutual assent of the parties to be included* within the meaning of the term "related companies" as that term was used in the Taco Bell application form.

Century could have easily protected itself in dealing with Mendoza by including an arbitration provision in the At-Will Contract that it signed with Mendoza. Alternatively, Century could have modified the Taco Bell application form so that it defined the term "related companies," so that Mendoza's "offer" to arbitrate would have been plain on its face and required no further proof.

III. Reconsideration

Century contends the trial court's decision to deny the company's motion to compel Mendoza to arbitrate his workplace claims under the arbitration provision in the Taco Bell application form must be reversed because the court "improperly reconsidered" its prior ruling in the *Ruiz* case. As noted above, the court ordered a different Century employee to arbitrate claims pursuant to the same arbitration provision. We see no error.

Century's reliance on Code of Civil Procedure section 1008 and three cases that applied the section reflect a poor reading of the law. As relevant, section 1008 provides: "When an application for *an order* has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, *any party affected by the order* may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, *make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order*. . . ." (Code of Civ. Proc., § 1008, subd. (a).)

By its plain language, Code of Civil Procedure section 1008 simply has no application in Mendoza's case. Section 1008 would apply in the event that a party affected by the order compelling arbitration in the *Ruiz* case had sought to modify, amend or revoke that order; section 1008 does not apply when a party in one case tries to bind a trial court to follow an order that it issued in a different case. All three cases applying section 1008 cited by Century (see *Wilson v. Science Applications Internat. Corp.* (1997) 52 Cal.App.4th 1025; *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494; and *Morite of California v. Superior Court* (1993) 19 Cal.App.4th 485) arose in the context of proceedings affecting an existing order in a single case.

What Century appears to be attempting to do is to invoke a legal principle akin to the doctrines of res judicata or, alternatively, issue preclusion, under the guise of its "improper reconsideration" argument. This argument fails for the simple reason that Century's arguments based on cases applying section 1008 do not support the proposition that a ruling by a trial judge in one case, based on certain claims and issues and certain showings, necessarily binds on the same judge in a second case to make the same ruling, regardless of the situation that different parties are involved and different issues are raised and different showings are made in the second case.

IV. The Remaining Issues

Our resolution of the issues discussed above makes it unnecessary for us to address the remaining issues in the parties' briefs, for example, whether the arbitration provision in the Taco Bell application was unenforceable due to unconscionability, or whether enforcement of the arbitration provision may be affected by the lack of signature by any Century agent on the arbitration provision.

DISPOSITION

The order denying Century's motion to compel arbitration is affirmed. Respondent is awarded costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.