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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

JOSE NAVA, Plaintiff and Respondent, v. PACIFIC COAST SIGHTSEEING TOURS & CHARTERS, INC., Defendant and Appellant.	B294217 (Los Angeles County Super. Ct. No. BC685681)

APPEAL from an order of the Superior Court of Los Angeles County, Maren E. Nelson, Judge. Affirmed with instructions.

Spencer C. Skeen and Nikolas T. Djordjevski for Defendant and Appellant.

Gartenberg Gelfand Hayton, Aaron C. Gundzik and Rebecca G. Gundzik for Plaintiff and Respondent.

Plaintiff and respondent Jose Nava sued his former employer, defendant and appellant Pacific Coast Sightseeing Tours & Charters, Inc. (PSS), alleging several causes of action both individually and on behalf of a putative class of PSS employees. PSS moved to compel arbitration of Nava's claims on an individual basis and to dismiss class claims. PSS appeals from the trial court's partial denial of that motion, arguing the trial court erred by: (1) compelling arbitration as to only some of Nava's claims; (2) staying such arbitration pending adjudication of the six causes of action the court determined must proceed in court; and (3) declining to dismiss Nava's class claims.

We find no error in the trial court's order regarding the first two issues. As to the first, the plain language of the agreement is not ambiguous and exempts from its scope all "statutory claims that cannot be waived as a matter of law." The trial court therefore correctly ordered Nava's causes of action that constitute "statutory claims that cannot be waived as a matter of law" proceed to litigation in court, but compelled to arbitration the two causes of action that do not meet this definition.

As to PSS's second contention, the Federal Arbitration Act (FAA) does not preempt Code of Civil Procedure section 1281.2, pursuant to which the court stayed arbitration of Nava's two arbitrable claims. The court thus did not abuse its discretion in applying this section, regardless of whether or not the FAA applies.

Finally, as to PSS's third contention, the court neither granted nor denied PSS's motion to dismiss class claims, nor did it expressly rule on PSS's request to compel *individual* arbitration. We therefore remand the matter with instructions that the trial court expressly rule on those requests. In all other respects, we affirm.

FACTUAL BACKGROUND

A. *PSS*

PSS is a Florida corporation that operates an interstate bus transportation service. It buses passengers throughout California, Nevada, and Arizona. It operates a charter bus service that carries international and out-of-state passengers to various destinations in California, Nevada, and Arizona.

Pursuant to a contract with the City of Los Angeles (the City), PSS operates an airport service that carries international and out-of-state passengers between the Los Angeles airport and various locations in California. PSS's contract with the City incorporates by reference the Los Angeles Living Wage Ordinance, which requires that employees working on certain projects for the City receive certain minimum compensation rights and creates a cause of action for employees who have not received these benefits.

B. *Nava's Employment at PSS and the Arbitration Agreement*

Nava began working for PSS as a commercial bus driver in or around October 2016. On October 14, 2016, Nava signed the dispute resolution procedures agreement (the agreement), a document PSS sends to all newly hired employees to sign.

The agreement sets forth a dispute resolution process for certain employment-related disputes. The first step in the process is the "Open Door Policy," which involves an "open discussion between the employee" and a supervisor or human resources representative. If this does not resolve the dispute, the next and "final step of the process is binding arbitration."

On the first page of the agreement, a section with the heading "[c]laims covered by this agreement" provides a broad description of the types of claims covered by the agreement and gives specific, non-exhaustive examples:

> "Any employment-related concern can be raised using the Open Door Policy. If the issue is not resolved there, final and binding arbitration is the exclusive forum in which to raise any and all claims and disputes which are in any way related to employment with the [c]ompany or to the termination of that employment. This includes, for example, claims for wrongful termination of employment; breach of contract; employment discrimination, harassment, or retaliation under Title VII of the Civil Rights Act of 1964 and its amendments, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and state and local anti-discrimination laws, including the California Fair Employment and Housing Act; tort claims, or any other legal claims; and causes of action recognized by local, state, or federal law or regulations. The agreement to arbitrate covers all such claims against the [c]ompany; its parent, subsidiary or affiliated companies; and their officers, directors, agents, and employees."

The next sentence in this section describes several types of claims that, although they may be "legal claims and causes of action recognized by local, state, or federal law or regulations" as described above, are nevertheless excluded from the scope of the agreement. Specifically, the remainder of the section provides in its entirety:

> "This agreement to arbitrate does not include workers' compensation claims, claims for unemployment benefits, any claim involving the construction or application of a benefit plan covered by ERISA, or statutory claims that cannot be waived as a matter of law, such as claims filed with the U.S.

> Equal Employment Opportunity Commission or the National Labor Relations Board."

The agreement also provides procedural details for both the "Open Door Policy" and the arbitration process. As to arbitration, the agreement includes a section with the heading "Arbitration—Specific Steps on How to Use It." This section begins with the sentence: "Any claim that an employee or the [c]ompany can bring in a court of law, can be submitted to arbitration pursuant to this agreement." It then goes on to explain certain procedural requirements for arbitration, and the processes for requesting arbitration, selecting an arbitrator, and enforcing and appealing an arbitration decision. The agreement further provides that "[PSS] and [Nava] will each contribute to the costs of [the arbitration]," although the employee's contribution is capped at $150. In addition, "[t]he employee is responsible to pay or otherwise make arrangements for his or her attorney's fees, if he or she chooses to be represented," as well as any expenses "[the employee] would have had to bear had [the employee] been able to bring this action in a court of law."

The agreement does not expressly address class or representative claims in any way. It requires, however, that the arbitrator "[b]e empowered to give the same remedies or damages that the parties would be entitled to if the dispute had been litigated in court." It also refers to "disputes" generally, rather than disputes between Nava and PSS.

Both parties signed the agreement under the statement: "I acknowledge that the company and I are both subject to mandatory, binding arbitration for claims arising under this agreement." (Boldface and capitalization omitted.)

C. *Nava's Complaint Against PSS*

Nava filed a wage and hour lawsuit against PSS, which it later amended. In the operative amended complaint, Nava seeks to recover penalties as a private attorney general through the Labor Code's Private Attorneys General Act of 2004, Labor Code sections 2698–2699.5 (PAGA claim), and alleges five other causes of action, both individually and on behalf of a putative class of PSS employees: (1) failure to provide meal and rest periods in violation of Labor Code sections 512, subdivision (a) and Labor Code section 226.7; (2) failure to provide accurate, itemized wage statements in violation of Labor Code section 226; (3) failure to pay wages upon separation of employment in violation of Labor Code section 201 and section 202; (4) failure to reimburse necessary business expenses in violation of Labor Code section 2802, subdivision (a) and the Wage Order section 9(A); and (5) "unlawful, unfair or fraudulent" business practices in violation of Business and Professions Code section 17200 (UCL claim).

D. *PSS's Motion to Compel Arbitration of Nava's Claims*

PSS moved to compel Nava's claims to individual arbitration, dismiss his class claims, and stay the remainder of the action pending the completion of the individual arbitration. The court held a hearing on the motion, at which neither the parties nor the court addressed the issue of classwide arbitration or PSS's motion to dismiss class claims. Neither in any briefing, nor at the hearing, did Nava contest that the FAA applied to the agreement.

The court ultimately issued a detailed written order "granting in part and denying in part [PSS]'s motion to compel arbitration and staying arbitration." (Capitalization omitted.) It concluded that all but two of Nava's non-PAGA claims—his UCL claim and his Labor Code section 512 claim alleging failure to provide

meal breaks and rest periods—were nonwaivable statutory claims and thus outside the scope of the agreement. The court ordered those two claims be arbitrated, but stayed the arbitration, on the basis that both the UCL and Labor Code section 512 claims "appears duplicative of the [non-arbitrable] Labor Code [section] 226.7 claim" and "resolution of the non-arbitrable claims may well obviate the need for arbitration." The court's order did not address PSS's request to dismiss the classwide claims or whether the agreement permits classwide arbitration.

PSS timely appealed the court's order.

DISCUSSION

A. *Applicability of the FAA*

The parties' appellate briefing discusses in some detail whether the FAA, 9 U.S.C. sections 1–16, applies to the agreement, although neither party contested its applicability during the proceedings below. Specifically, Nava's respondent's brief argues that under *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274—a decision that postdates the trial court proceedings—the agreement falls outside the scope of the FAA as an employment contract of a "transportation workers engaged in interstate commerce." (*Id.* at p. 276.) Since submitting his brief, Nava has identified additional recent authority bearing on this issue. (See *Singh v. Uber Technologies, Inc.* (3d Cir. Sept. 11, 2019, No. 17-1397) [2019 WL 4282185].) Relying on such authority, Nava responds to PSS's arguments on appeal by applying state law doctrines that, according to PSS, the FAA preempts.

Even assuming the authorities Nava cites reflect a "new point of law" sufficient to excuse Nava's failure to raise this issue below (see *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 654, fn. 3), we need not decide the issue of the FAA's applicability. As discussed

below, our analysis would be the same under California law or the FAA.

B. *Denial of Motion to Compel Certain Claims*

PSS first argues that none of Nava's non-PAGA[1] claims falls outside the scope of the agreement, and thus that the trial court erred to the extent it denied PSS's motion to compel arbitration as to any non-PAGA claim. The parties dispute the basis for the trial court's decision in this regard. We need not resolve this dispute, however, as we "are not limited by" the trial court's reasoning. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp.* (2003) 111 Cal.App.4th 1328, 1340.) To the extent the court's partial denial of PSS's motion was correct on any basis, we must affirm. (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18–19.) We conclude, based on the plain language of the agreement, that the trial court correctly declined to compel arbitration as to all but the Labor Code section 512 and UCL claims.

Under both the FAA and the California Arbitration Act, " ' "arbitration agreements are valid, irrevocable and enforceable except upon grounds that exist for revocation of the contract generally." ' " (*Rebolledo v. Tilly's, Inc.* (2014) 228 Cal.App.4th 900, 912 (*Rebolledo*).) Because " ' "[a]rbitration is a matter of contract," ' " neither the FAA nor California law requires arbitration of claims the parties never agreed to arbitrate. (*Ibid.*; *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 384–385 (*Cronus*) ["the FAA does not force parties to arbitrate

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[1] Although PSS's motion to compel did not exclude Nava's PAGA claim, the parties did not dispute below, and do not dispute on appeal, that Nava's PAGA claim is not subject to arbitration as a matter of law.

when they have not agreed to do so"]; *Cheng–Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 683 [same under California law]; see *Volt Info. Sciences v. Leland Stanford Jr. U.* (1989) 489 U.S. 468, 479 (*Volt*) [same under FAA].) Thus, regardless of whether or not the FAA applies, "[i]n ruling on a motion to compel arbitration, the court, guided by general principles of California law, must first determine whether the parties actually agreed to arbitrate the dispute." (*Garcia v. Superior Court* (2015) 236 Cal.App.4th 1138, 1144; see *Cheng–Canindin, supra,* at p. 683 ["question of whether the parties agreed to arbitrate is answered by applying state contract law even when it is alleged that the agreement is covered by the FAA"].)

We review de novo "a trial court order granting or denying a motion to compel arbitration" where, as here, there are no factual disputes regarding extrinsic evidence. (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1061–1062.)

Here, the section of the agreement addressing the claims the agreement covers first states a general rule—that "final and binding arbitration is the exclusive forum in which to raise any and all claims and disputes which are in any way related to employment with [PSS] or to the termination of that employment"—followed by several exceptions to that general rule. These exceptions include specific claims, such as worker's compensation and ERISA claims, as well as a general category of all "statutory claims that cannot be waived as a matter of law, such as claims filed with the U.S. Equal Employment Opportunity Commission or the National Labor Relations Board." Two pages later, in a section of the agreement devoted to outlining "Specific Steps on How to Use [Arbitration]," the agreement provides that "[a]ny claim that an employee or the [c]ompany can bring in a court of law, can be submitted to arbitration pursuant to this agreement," then proceeds to

discuss specific procedural requirements for arbitration under the agreement. This section does not repeat the list of exceptions previously outlined.

PSS argues that this language creates ambiguity as to what "statutory claims that cannot be waived as a matter of law" means, and that the court should have interpreted the phrase as referring to administrative claims that, like the EEOC and NLRB claims the agreement specifically identifies as outside its scope, must first be raised in an administrative proceeding. In making his argument, PSS cites the FAA's general presumption that, where contract language is ambiguous, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." (*Moses H. Cone Hospital v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24.)

1. *The agreement's use of the term "statutory claims that cannot be waived as a matter of law" is not ambiguous*

In California, an agreement is ambiguous " ' "when it is capable of two or more constructions, both of which are reasonable." ' " (*Powerine Oil Co., Inc. v. Superior Ct.* (2005) 37 Cal.4th 377, 391; accord, *Lamps Plus, Inc. v. Varela* (2019) 587 U.S. __, __ [139 S.Ct. 1407, 1414–1415, 203 L.Ed.2d 636, 643-645] (*Lamps Plus*).) The agreement's use of the term "statutory claims that cannot be waived as a matter of law" creates no such ambiguity. First, the plain language of the term is straightforward and self-explanatory. Second, the concept of a nonwaivable statutory claim has an established meaning under California law: a cause of action that a statute does not permit a potential plaintiff to waive by private agreement. (See *Armendariz v. Foundation*

Health Psychcare Services, Inc. (2000) 24 Cal.4th 83, 100 (*Armendariz*).)[2]

Finally, PSS's alternative interpretation of this language—as referring to claims involving mandatory *administrative proceedings*—is not reasonable. "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ. Code, § 1638.) The agreement does not describe the categorical exception in terms tied to administrative proceedings, but rather refers to claims that may not be waived. It is unreasonable to suggest that, in lieu of expressly stating that all claims involving administrative proceedings are exempt, the agreement conveys this by instead using much broader language and offering a non-exhaustive list of two examples that happen to involve administrative proceedings. "If [PSS] intended to exclude only [claims involving administrative proceedings,] it could have narrowly drafted and defined the phrases" employed to describe such exclusion. (*Rebolledo, supra,* 228 Cal.App.4th at p. 918.) It did not. In essence, PSS asks us to "rewrite the agreement to expressly limit the exclusion . . . . This we cannot do." (*Ibid.* [rejecting, based on the plain language of an arbitration agreement, a proposed interpretation of the phrase all

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[2] *Armendariz* discusses this concept in the context of certain minimal procedural guarantees that must be in place in order for "arbitration agreements that encompass unwaivable statutory rights" to be enforceable. (*Armendariz, supra*, 24 Cal.4th at p. 100, italics omitted.) Here, neither party argues that any of Nava's claims may not be arbitrated based on the agreement failing to afford such minimal safeguards. Nor do we base our holding on any such argument.

claims "within the jurisdiction" of the Labor Commissioner as referring to all claims filed with the commissioner].)

We further reject PSS's argument that the "[a]ny claim that an employee or the [c]ompany can bring in a court of law" language in the agreement creates ambiguity because, taken literally, this language is inconsistent with the list of exceptions to the agreement's scope outlined earlier in the agreement. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) The language on which PSS relies appears only in a section describing specific procedures for arbitration under the agreement—not in the earlier section describing in detail the "[cl]aims covered by [the] agreement." Considering the language, as we must, in the context of the agreement as a whole, the only reasonable interpretation of the agreement's use of the phrase "[a]ny claim that an employee or the [c]ompany can bring in a court of law" is as a shorthand reference to the body of claims described earlier. Any *other* interpretation of this language would render superfluous—and thus fail to "give effect to"—the list of exceptions noted in the agreement's definition of "[c]laims covered by [the] agreement." (Civ. Code, § 1641.) Moreover, interpreting this language literally would also sweep within the scope of the agreement various claims that, as a matter of law, may not be compelled to arbitration, a "[r]epugnancy" that might nullify portions of the agreement, but may be avoided by interpreting the phrase in context of the entire agreement. (Civ. Code, § 1652 ["Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract."]; *id.*, § 1641.) We conclude

PSS's strained interpretation creates no ambiguity as to the scope of the agreement.

There is thus no reasonable basis for interpreting the agreement as meaning something other than what it says: namely, that the parties do not agree to arbitrate claims pursuant to any statute if the law prohibits waiver of such claims. Because we conclude the agreement is unambiguous in this regard, we have no occasion to apply any default rules of contract interpretation. We therefore need not and do not address the parties' arguments as to whether, if the FAA applies, the United States Supreme Court's recent decision in *Lamps Plus, supra,* 139 S.Ct. 1407, prohibits application of the doctrine of *contra preferendum* to interpret ambiguous language in the agreement.

2. *Nava's Labor Code sections 226.7, 201, 202, and 2802, subdivision (a) claims are "statutory claims that cannot be waived as a matter of law"*

Applying this interpretation, we conclude the trial court correctly determined that Nava's Labor Code sections 226.7, 201, 202, and 2802, subdivision (a) claims were outside the scope of the agreement. All of these code sections are contained in either article 1 or article 2. (See Lab. Code, §§ 226.7, 201, 202, 2802, subd. (a).) The code provides that "no provision of [article 1] can in any way be contravened or set aside by a private agreement, whether written, oral, or implied" (Lab. Code, § 219, subd. (a)) and that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of [article 2] or any part thereof, is null and void." (Lab. Code, § 2804.) Thus, Nava's causes of action under sections contained in article 1 or article 2 of the code are "statutory claims that cannot be waived as a matter of law." (See Lab. Code, §§ 219, 2804.) The trial court therefore

correctly determined that Nava's Labor Code sections 226.7, 201, 202, and 2802, subdivision (a) claims were outside the scope of what the parties agreed to arbitrate, and correctly denied PSS's motion to compel as to those claims.[3]

C. *Decision to Stay Arbitration*

PSS argues the trial court abused its discretion by staying arbitration of Nava's Labor Code section 512 and UCL claims pending the outcome of the related litigation. Once a court determines an agreement to arbitrate exists, Code of Civil Procedure section 1281.2 "limits the trial court's discretion to delay[] arbitration." (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 977 (*Acquire*); see Code Civ. Proc., § 1281.2.) That statute provides that where, as here, "the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action . . . between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies." (Code Civ. Proc., § 1281.2, subd. (d).)

PSS does not dispute the trial court's conclusion that Nava's Labor Code section 512 and UCL claims are derivative of the non-arbitrable claims, or that, as a result, "resolving [Nava's]

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[3] In his respondent's brief, Nava argues that "the Court should reverse the trial court's decision to the extent it requires [Nava] to arbitrate any of his claims." We need not rule on this request, as Nava has not filed an appeal. In any event, we consider the issue in connection with our analysis of PSS's arguments and, for the reasons set forth above, find no error in the trial court's decision to compel arbitration of only the Labor Code section 512 and UCL claims.

nonarbitrable claims [in court] may make arbitration of the other claims unnecessary." (*Acquire, supra*, 213 Cal.App.4th at p. 977.) Rather, PSS argues that "[where] the FAA applies [Code of Civil Procedure] section 1281.2 does not." PSS is incorrect.

The California Supreme Court rejected the idea that the FAA preempts Code of Civil Procedure section 1281.2 in *Cronus,* which expressly addresses "whether [Code of Civil Procedure] section 1281.2[, subdivision](c) conflicts with or frustrates the objectives of the FAA." (*Cronus, supra*, 35 Cal.4th at p. 394.) The court concluded that "[Code of Civil Procedure section 1281.2, subdivision (c)] does not conflict with the applicable provisions of the FAA and does not undermine or frustrate the FAA's substantive policy favoring arbitration." (*Cronus, supra*, at p. 393.) Based on the FAA's legislative history and United States Supreme Court precedent, the *Cronus* court explained that the procedural provisions of FAA apply only in federal court, and thus do not conflict with California procedure applicable in California state court. (*Cronus, supra*, at pp. 377-378 [quoting and analyzing legislative history]; *id.* at pp. 388-389, citing *Volt, supra*, 489 U.S. at p. 479.) *Cronus* also expressly recognizes that parties are free to incorporate the procedural provisions of the FAA into an arbitration agreement. (*Cronus, supra*, at p. 394.) To achieve this, however, the parties must include in their agreement "a choice-of-law clause expressly incorporating . . . the FAA's procedural provisions." (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 173–174, 176 [concluding agreement stating the "[i]nterpretation of this agreement . . . shall be governed by the [FAA]" insufficient to incorporate FAA procedural provisions]; *compare ibid. with Wyatt v. Own a Car of Fresno* (Feb. 20, 2019, No. F075692) 2019 WL 698017 at *1 [concluding "arbitration provision, which states that any arbitration 'shall be governed by the [FAA] and not by any state law

concerning arbitration,' incorporates the FAA's procedural provisions"]; see also *Mave Enterprises, Inc. v. Travelers Indemnity Co.* (2013) 219 Cal.App.4th 1408, 1429 ["the procedural provisions of the [California Arbitration Act]" apply in California courts "absent a choice-of-law provision expressly mandating the application of the procedural law of another jurisdiction"].) The agreement here reflects no express election of FAA procedures. Rather, with respect to the FAA, the agreement provides: "This [agreement] is enforceable under the [FAA]. If the FAA is held not to apply for any reason, and a court recognizes the enforceability of this [a]greement and the arbitration award, . . . then this [a]greement and the arbitration award are enforceable under the applicable state statute governing arbitrations."

As to the FAA's general policy favoring arbitration, *Cronus* concludes that "[Code of Civil Procedure section] '1281.2[, subdivision](c) is not a provision designed to limit the rights of parties who choose to arbitrate or otherwise to discourage the use of arbitration,' " but rather "is part of California's statutory scheme designed to enforce the parties' arbitration agreements, as the FAA requires." (*Cronus, supra*, 35 Cal.4th at p. 393.)

Although *Cronus* considered this issue in applying the subject arbitration agreement's choice-of-law provision, the preemption analysis in *Cronus* is not limited to situations in which the arbitration agreement contains such a provision. The choice-of-law provision in *Cronus* stated that California law applied, except to the extent that the FAA would preempt it. (See *Cronus, supra*, 35 Cal.4th at p. 380 ["In this case, the parties agreed that their arbitration agreement would be governed by California law, but they further agreed that the designation of California law 'shall not be deemed an election to preclude application of the [FAA], if it would be applicable.' "].) Thus, the *Cronus* court did decide the

broader issue of whether Code of Civil Procedure section 1281.2, subdivision (c) "contravene[s] the letter or the spirit of the FAA." (*Cronus, supra*, at p. 393; see also *id.* at p. 380 ["in this situation, the FAA also does not preempt the application of [Code Civ. Proc., §] 1281.2, subd[.] (c)"].) Accordingly, *Cronus* "disapprove[d]" earlier Court of Appeal authority—including *Energy Group, Inc. v. Liddington* (1987) 192 Cal.App.3d 1520, the case on which PSS primarily relies for its argument opposing the stay—"to the extent their holdings are predicated on the conclusion that [Code of Civil Procedure] section 1281.2[, subdivision](c) . . . conflicts with the FAA." (*Cronus, supra*, at p. 393, fn. 8.)

The FAA does not preempt Code of Civil Procedure section 1281.2, (*Cronus, supra*, 35 Cal.4th at p. 394; see *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 352 [FAA preempts state law only to the extent it " 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' " of the FAA]), and the court did not abuse its discretion in staying the arbitration under Code of Civil Procedure section 1281.2, subdivision (d), regardless of whether or not the FAA applies.[4]

D. *Nava's Unconscionability and Living Wage Ordinance Arguments*

Finally, Nava responds to PSS's arguments on appeal by attacking the enforceability of the agreement generally. Nava argues the agreement is both unconscionable and prohibited by the Los Angeles Living Wage Ordinance, and thus does not provide

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[4] Because we find authority for the court's stay of arbitration under Code of Civil Procedure section 1281.2, subdivision (d), as outlined above, we need not address PSS's argument that Code of Civil Procedure section 1281.2, subdivision (c)—which addresses stays of arbitration based on pending litigation with third parties—does not apply to him.

an enforceable basis for arbitrating *any* claims. Neither of these arguments has merit.

1. *Unconscionability*

The sole basis for Nava's substantive unconscionability argument is that, according to Nava, the agreement forces Nava to waive his statutory right to recover any attorney fees in the event he prevails. But the agreement neither requires nor implies any such waiver. In arguing to the contrary, Nava cites *Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227 (*Carbajal*), in which the court interpreted a requirement that the employee be "responsible for [his or her] own attorney fees," as waiving the employee's right to seek attorney's fees under *any* circumstances. (*Id.* at pp. 235, 251.) But the language at issue in *Carbajal* is distinguishable. Here, the agreement states that "[Nava] is responsible to pay *or otherwise make arrangements for* his or her attorney's fees," which could include seeking fees due under the statute. (Italics added.) The agreement empowers the arbitrator to award appropriate attorney fees by requiring that the arbitrator "[b]e empowered to give the same remedies . . . that the parties would be entitled to if the dispute had been litigated in court." Such remedies for Nava's claims under the statute include attorney fees.[5] (See, e.g., Lab.

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[5] *Carbajal* rejected similar language as a basis for concluding an employee could obtain attorney fees, but only because such an interpretation of the language was inconsistent with the unqualified statement elsewhere in the agreement that the employee would be responsible for his or her own attorney fees without exception. (See *Carbajal, supra*, 245 Cal.App.4th at p. 251 ["The arbitration provision's plain language requires the parties to be responsible for their own attorney fees without any exceptions. Nothing in the provision's language suggestions the parties intended to limit or qualify this provision by also granting the arbitrators broad authority to award all types of relief authorized

Code, § 226, subd. (e)(1) [plaintiff suffering violation of this section "entitled to an award of costs and reasonable attorney's fees"].) Thus, the agreement's provisions regarding attorney fees are not substantively unconscionable.

2. *Living Wage Ordinance*

The Los Angeles Living Wage Ordinance (LWO) "prescrib[es] a minimum level of compensation for employees of private firms who work on service contracts benefiting the [C]ity." (*Aguiar v. Superior Court* (2009) 170 Cal.App.4th 313, 317; see L.A. Admin. Code, § 10.37 et seq.) The LWO and its implementing regulations permit a worker entitled to LWO benefits to bring an action to enforce them in the superior court. The language is permissive, not mandatory: "An [e]mployee claiming violation of this article *may* bring an action in the [s]uperior [c]ourt." (Italics added.)

The LWO is expressly incorporated into the contract between PSS and the City setting forth work PSS is to do for the City. Nava is not a party to this contract, and nothing in the record suggests the LWO was incorporated into any agreement between Nava and PSS. Thus, to the extent PSS has failed to offer the minimum protections required by the LWO, and/or to the extent the LWO prohibits the arbitration required by the agreement, this may be a breach of PSS's municipal contract but it has no effect on Nava's ability to arbitrate any claims, including claims under the LWO.

The LWO thus has no effect on Nava's ability to agree to arbitrate employment related disputes with PSS, and the LWO does not preempt the agreement.

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by law."].) As noted above, no such unqualified statement appears in the agreement here.

E. *Classwide Arbitration and Motion to Dismiss Class Claims*

PSS next argues that the trial court erred by failing to dismiss Nava's class claims associated with the causes of action ordered to arbitration. According to PSS, because the agreement does not allow class arbitration, the trial court should have compelled arbitration solely on an individual basis and dismissed the related class claims. PSS relies on the United States Supreme Court's recent decision in *Lamps Plus* for the proposition that an agreement's silence or ambiguity regarding classwide arbitration is an insufficient basis to "compel arbitration on a classwide basis." (*Lamps Plus, supra*, 139 S.Ct. at p. 1412.) PSS finds error in a ruling the trial court did not make.

In the order from which PSS appeals, the court neither granted nor denied PSS's motion to dismiss class claims. Nor did the trial court expressly rule on the availability of class arbitration. Although PSS moved "to compel arbitration on an *individual* basis" and to "dismiss class claims" (italics added and capitalization omitted), the trial court's order is captioned, and appears in the trial court docket, as one "granting in part and denying in part defendant's motion to compel arbitration and staying arbitration"—without reference to "individual arbitration" or the requested class claim dismissal. (Capitalization omitted.)

We decline to review an order the trial court did not clearly make, or to assume we understand what the court intended to do when this is not clear from the face of the order. Instead, we remand with instructions that the trial court shall expressly rule on both PSS's motion to dismiss class claims and PSS's request that the court compel *individual* arbitration specifically.

DISPOSITION

The order is affirmed, except to the extent that, upon remand, the trial court is instructed to rule expressly on (1) PSS's motion to dismiss, to the extent it seeks dismissal of the class claims associated with the two causes of action the court compelled to arbitration (Nava's Lab. Code, § 512 claim and UCL claim), and (2) PSS's motion to compel *individual* arbitration. The court shall modify or amend its previous order accordingly. Nava to recover his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.