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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

REFUGIO ARREGUIN Plaintiff and Respondent, v. E. & J. GALLO WINERY, et al., Defendants and Appellants.	A145553 (Sonoma County Super. Ct. No. SCV 256487)

Appellant Star H-R, Inc. (Star) is a labor contractor that hired respondent Refugio Arreguin to work in a warehouse for one of its clients, appellant E. & J. Gallo Winery (Gallo). In applying for the job with Star, Arreguin signed an arbitration agreement, but he later brought individual and class-based claims against Star and Gallo in superior court. This case requires us to determine whether the arbitration agreement between Star and Arreguin is enforceable and, if it is, whether Arreguin's class-action claims and claims against Gallo must also go to the arbitrator. The trial court found that the arbitration agreement was procedurally and substantively unconscionable and refused to compel arbitration. We agree that the agreement is procedurally unconscionable but find no substantive unconscionability, and so reverse the order denying appellants' motions to compel arbitration. We conclude that the entire case, including the question whether Arreguin may prosecute class claims, should proceed to arbitration.

FACTUAL AND PROCEDURAL BACKGROUND

On August 5, 2013, Arreguin walked into a Star office and applied for a job. He was handed some paperwork, which he was told he had to complete on-site in order to get an interview, and when he asked a question about the papers he was told no Star employee could assist him. Undeterred, Arreguin filled out a Spanish-language application form, was interviewed and asked about his availability to work at a Gallo facility in Healdsburg, and was hired on the spot. Nobody in the hiring process explained anything about arbitration to Arreguin, and he was never given a copy of the rules mentioned in the arbitration agreement that the company asked him to sign. Nor was he given a copy of the arbitration agreement or other employment paperwork as he left the hiring office. Arreguin worked for Star at Gallo for a period of three months and, after leaving, filed this case.

Arreguin's complaint alleges on behalf of himself and other hourly, non-exempt employees that Star, Gallo, and unnamed Doe defendants violated California wage and hour laws. He brings causes of action under minimum wage, overtime, and other sections of the Labor Code, and Business & Professions Code section 17200, et seq. Arreguin alleges that Star and Gallo "have acted as joint employers" and "are jointly and severally liable as employers" because they "each exercised sufficient control over the wages, hours, working conditions, and employment status of" class members. Mostly, the complaint addresses the conduct of "Defendants" collectively, rather than distinguishing between the actions of Star and Gallo.

Star and Gallo moved to compel arbitration. They pointed out that Arreguin's employment application includes an arbitration agreement that Arreguin had signed. The agreement, translated from the Spanish, reads as follows (with grammatical irregularities preserved):

APPLICANT'S ACCEPTANCE OF
ARBITRATION AGREEMENT

> As a condition of my employment with Star Staffing, I consent that all disputes that may arise out, or be related to my employment, be arbitrated under the National Rules for the Resolution of Employment disputes of the American Arbitration Association in San Francisco . . . or any other respectable referral service for arbitration.
>
> The claims subject to arbitration shall include, but are not limited to a specific or implicit contract. These claims may be damages of any type, as well as claims based on state, federal or local regulations or decrees, only with the exception of claims under laws pertaining to workers compensation insurance and unemployment. Therefore, claims regarding sexual discrimination, sexual harassment, age discrimination and discrimination based on disability will be subject to arbitration.
>
> FURTHERMORE, I UNDERSTAND THAT AS A RESULT OF THIS ARBITRATION AGREEMENT, THE COMPANY AND I AGREE TO WAIVE ANY RIGHT WE MAY HAVE TO HAVE A JURY TRIAL.

On blank lines under this pre-printed text, Arreguin initialed and signed his name. No representative of Star or Gallo signed the document, nor is there a blank line for such a signature.

The trial court found that the agreement was unconscionable, and thus unenforceable. Addressing procedural unconscionability, the court observed that the arbitration agreement was a pre-employment contract involving parties of unequal bargaining power, that it was a contract of adhesion, and that Arreguin was never given a copy of the arbitral rules. With regard to substantive unconscionability, the court found that the arbitration agreement lacks mutuality and binds only the employee. By written order filed June 10, 2015, the trial court denied the motions to compel arbitration.

On June 23, 2015, both Star and Gallo appealed.

DISCUSSION

An order denying a motion to compel arbitration may be appealed, and the legal question is subject to de novo review. (Code Civ. Proc., § 1294, subd. (a); *Omar v. Ralphs Grocery Co.* (2004) 118 Cal.App.4th 955, 959.) In particular, de novo review of an order refusing to enforce an arbitration agreement is appropriate where, as here, " ' " ' "no conflicting extrinsic evidence in aid of interpretation was introduced in the trial court." ' " ' " (*Brown v. Ralphs Grocery, Inc.* (2011) 197 Cal.App.4th 489, 497; see also *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 267.)

I. The Arbitration Agreement Is Enforceable

A

"California law, like federal law, favors enforcement of valid arbitration agreements," allowing that they "may only be invalidated for the same reasons as other contracts." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97–98 (*Armendariz*).) This principle applies even where the agreement to arbitrate is part of an employment contract. (*Id*. at p. 98 [interpreting California Arbitration Act]; *Circuit City Stores v. Adams* (2001) 532 U.S. 105 [interpreting Federal Arbitration Act].) Thus, the enforceability of this arbitration agreement rests on ordinary principles of California contract law, although "ordinary principles of unconscionability may manifest themselves in forms peculiar to the arbitration context." (*Armendariz, supra,* at p. 119.)

California law provides that an agreement may be unenforceable if it is both procedurally and substantively unconscionable. (*Armendariz, supra,* 24 Cal.4th at p. 114.) Procedural unconscionability involves " ' "oppression or surprise due to unequal bargaining power." ' " (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243 (*Baltazar*).) It exists where there is " ' " ' "an absence of meaningful choice on the part of one of the parties" ' " ' " to a contract, such as with a contract of adhesion. (*Ibid*.) Substantive unconscionability describes a contract whose terms are overly harsh or unfairly one-sided. (*Armendariz*, at p. 114; *Baltazar*, at p. 1243.) Not every bad bargain or one-sided contractual provision is substantively unconscionable. (*Ibid*.) The question

is whether a contract is " 'sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement.' " (*Baltazar*, at p. 1245.) Courts will consider the two kinds of unconscionability together on a " 'sliding scale,' " but only if both are present. (*Armendariz*, at p. 114.)

B

We find the procedure whereby Star procured Arreguin's consent to the arbitration agreement unconscionable. At the outset, we note that a contract of adhesion imposed by a party with superior bargaining power is procedurally unconscionable. (*Baltazar*, *supra*, 62 Cal.4th at pp. 1244–1245.) Unquestionably this was a contract of adhesion, in that Star presented it to Arreguin as a document he must sign without discussing its content with a Star representative, if he wanted to be considered for employment. Star's take-it-or-leave-it approach is evidence that Arreguin had no bargaining power. Pointing in the same direction is the fact that Arreguin was applying for work as a forklift operator, instead of for a position that required very specialized and sought-after skills. (Cf. *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1671.) As our Supreme Court noted in discussing another pre-employment arbitration contract, "the economic pressure exerted by employers on all but the most sought-after employees may be particularly acute, for the arbitration agreement stands between the employee and necessary employment, and few employees are in a position to refuse a job because of an arbitration requirement." (*Armendariz*, *supra*, 24 Cal.4th at p. 115.)

These facts alone suffice to establish at least some degree of procedural unconscionability, but the procedural unconscionability in this case goes further. There is an element of duress in Star's refusal to answer questions that Arreguin had about the paperwork while, at the same time, effectively obstructing steps that Arreguin could have taken to get answers elsewhere. By insisting that Arreguin fill out the arbitration agreement without taking any of the paperwork home first, Star prevented him from consulting anyone else who could have answered his questions before he signed the document. By failing to give him a copy of the agreement as he left the office, Star made it difficult for Arreguin to research the commitment Star had extracted from him before

he showed up to begin working at Gallo. For these reasons, the procedural unconscionability is greater here than in *Baltazar*. Not only did Star fail to give Arreguin a copy of the AAA rules, but it failed to give him a copy of the arbitration agreement from which he might have been able to find the applicable rules himself (although Star placed an additional hurdle there, too, by misidentifying the applicable AAA rules). (Cf. *Baltazar*, *supra*, 62 Cal.4th at p. 1246.)

In spite of this procedural unconscionability, California law requires that we enforce the arbitration agreement unless we also find it substantively unconscionable (*Baltazar*, *supra*, 62 Cal.4th at p. 1243), so we now turn to that subject.

C

Arreguin argues, and the trial court found, that the arbitration agreement is substantively unconscionable because it does not bind or impose mutual obligations on Star, but requires only Arreguin to submit disputes to arbitration. Star counters that, although it did not sign the document, the agreement binds Star and should be construed as requiring both Star and Arreguin to submit to arbitration all employment-related disputes. Under controlling principles of California contract law, we conclude that Star has the better argument.

(1)

A "writing memorializing an arbitration agreement need not be signed by both parties in order to be upheld as a binding arbitration agreement." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 176 (*Serafin*).) California contract law requires that the parties communicate to each other their mutual assent to be bound by an agreement, but words and acts can be enough to demonstrate this assent. (*Id*. at p. 173.) Where one party has not signed an arbitration agreement, the party's assent can be inferred from conduct implying acceptance or ratification. (*Id*. at p. 176; see also Civ. Code, § 3388 ["A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part . . . "].)

Here, Star demonstrated its intent to be bound by the arbitration agreement through the agreement's language and its central role in hiring Arreguin. A Star representative offered the form agreement to Arreguin as part of the employment application he needed to fill out if he wanted a job interview. The title characterizes the document as an applicant's "ACCEPTANCE OF" an arbitration "AGREEMENT," suggesting the document is a unilateral offer that need only be accepted to become binding. (See *Donovan v. RRL Corp*., 26 Cal.4th 261, 270–271.) Although this arbitration agreement is not printed on letterhead, there is no ambiguity as to the identity of the offering party. The agreement appears on the third page of a three-page employment application that has "Star H-R, Inc." emblazoned on the first page, and a reference to "Star HR dba Star Staffing" on the second page. The third page—the "APPLICANT'S ACCEPTANCE OF ARBITRATION AGREEMENT"—then declares, in its first line, that Arreguin's consent is "a condition of . . . employment with Star Staffing." The agreement by its terms expressly requires Star, as well as Arreguin, to waive its right to a jury trial. Star offered this arbitration agreement, and Arreguin accepted the agreement by signing the form and returning it to the Star representative. The fact that there is no signature line for Star only confirms that no decision remained pending on the company's part as to whether it would accept its own proposed arbitration agreement. At the latest, the company manifested its intent to be bound when it proceeded to employ Arreguin.

Other California courts have enforced arbitration agreements in similar contexts, even when they were signed by only one party. In *Serafin*, plaintiff employee signed a document acknowledging the employer's "MANDATORY ARBITRATION POLICY," which the employer did not sign, but after a thorough analysis the court found that the agreement was binding on both parties. (*Serafin*, *supra*, 235 Cal.App.4th at pp. 176–177.) Similarly, in *Cruise v. Kroger Co*. (2015) 233 Cal.App.4th 390 the court found that the defendant employer evidenced an intent to be bound by an arbitration agreement signed only by the plaintiff employee under circumstances similar to those in our case. The employer printed an agreement on its company letterhead, submitted it to candidates

for employment as part the employment application, and used language in the document purporting to obligate both parties to arbitrate disputes. (*Id*. at pp. 397–399.) We find the logic of *Serafin* and *Cruise* persuasive, and conclude that under settled principles of California contract law Star and Arreguin exhibited their mutual assent to the arbitration agreement.

Arreguin points to two cases involving arbitration agreements in an employment context that reach a contrary conclusion, but neither is persuasive in the context of this case. *Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74 states that an employee who initialed a clause requiring arbitration was "[t]he only party clearly agreeing to the clause," but the court finds a fatal lack of mutuality only after proceeding to analyze other language in the contract that reserves, for disputes that only the employer would initiate, a choice between court and arbitration. (*Id*. at pp. 79, 86.) In Star's agreement there is no similar class of employer claims excluded from the scope of mandatory arbitration, so *Carmona* is easily distinguished. Arreguin also points to *Sullenberger v. Titan Health Corp*. (E.D. Cal., May 20, 2009, No. CIV. S-08-2285) 2009 U.S. Dist. LEXIS 46586, whose facts are closer to our case, but in this unpublished opinion there is no analysis of the relevant principles of California contract law at all. (*Id*. at p. *17.) *Sullenberger* merely cites to *Higgins v. Superior Court* (2006) 140 Cal.App.4th 1238, 1254, another case in which the court analyzed the language of the agreement to conclude that the defendants' arbitration clause allowed the defendants, but not the plaintiffs, to compel arbitration. That the defendants did not sign the agreement (until after the motion to compel was filed) merited no more than a footnote in *Higgins*. (*Id*. at p. 1254, fn. 11.) Since neither of Arreguin's cases dissuades us from the view that Star and Arreguin are both bound by the arbitration agreement (if it is enforceable), we turn now to examine whether the terms of that agreement are appropriately bilateral.

(2)

An arbitration agreement is substantively unconscionable if it is not, to a certain degree, bilateral. (*Armendariz*, *supra*, 24 Cal.4th at p. 117.) "[T]he doctrine of

unconscionability limits the extent to which a stronger party may, through a contract of adhesion, impose the arbitration forum on the weaker party without accepting that forum for itself." (*Id*. at p. 118.) We conclude that this arbitration agreement escapes unconscionability only because its terms compel Star, as well as Arreguin, to arbitrate all their employment-related disputes. In reaching that conclusion, we start with the language of the agreement.

The first paragraph contains broad language that defines the agreement's basic scope: "all disputes that may arise out [of], or be related to [Arreguin's] employment" must "be arbitrated." Arreguin expressly "consent[s]" to this scope by signing the agreement. Star implicitly consents to this scope by presenting the agreement to Arreguin and insisting he sign it. The language of this first paragraph is in no way limited to only those disputes that Arreguin initiates, nor to certain categories of complaints that an employee is more likely than an employer to bring. "*[A]ll disputes*" related to Arreguin's employment at Star are included under the broad language of the first paragraph.

Roman v. Superior Court (2009) 172 Cal.App.4th 1462 construed similar language, reaching the same conclusion. The arbitration clause in *Roman* had the employee undertake, essentially, this: " 'I agree, in the event I am hired by the company, that all disputes and claims that might arise out of my employment with the company will be submitted to binding arbitration.' " (*Id*. at p. 1466.) No mirror-image language specified what the employer was agreeing to, but the court nonetheless found that the agreement imposed bilateral obligations. "[T]he use of the 'I agree' language in an arbitration clause that expressly covers 'all disputes' creates a mutual agreement to arbitrate all claims arising out of the applicant's employment." (*Ibid*.) Because the employee's assent created an obligation that was mutual, the agreement was not substantively unconscionable. (*Ibid*.)

The second paragraph of Star's arbitration agreement gives examples of the kinds of disputes the agreement covers, but does not limit the kinds of claims that must be arbitrated, with two specific exceptions. The paragraph begins expansively: "The claims

subject to arbitration shall include, but are not limited to . . . ." It specifies that "claims based on state, federal or local regulations or decrees" are included, except that the agreement expressly exempts workers' compensation insurance and unemployment claims. The paragraph then gives examples of claims based on state and federal law that do fall within the scope of the arbitration agreement, such as sexual discrimination and harassment claims. As in *Baltazar*, this "illustrative list of claims subject to the agreement is just that; . . . the list is not intended to be exhaustive" and "casts no doubt on the comprehensive reach of the arbitration agreement" as outlined in the agreement's first paragraph. (*Baltazar*, *supra*, 62 Cal.4th at p. 1249.)

The third paragraph of the agreement confirms that Star and Arreguin are both giving up the right to take employment-related disputes to court. In all capital letters it announces, "AS A RESULT OF THIS ARBITRATION AGREEMENT, THE COMPANY AND I AGREE TO WAIVE ANY RIGHT WE MAY HAVE TO HAVE A JURY TRIAL." This language is louder (because capitalized) but in some ways less precise than the two paragraphs that precede it. It warns employees of a particularly important "result" of the arbitration agreement outlined in the two preceding paragraphs, namely that the parties are giving up their right to a jury trial. In emphasizing this consequence of the agreement, the third paragraph neglects to mention that, also as a result of the arbitration agreement, both sides are waiving their right to a bench trial. The third paragraph also does not specify that the waiver of rights to a jury trial applies only to those disputes that relate to Arreguin's employment with Star, a restriction that is nonetheless clear from the two earlier paragraphs. But on one point, the third paragraph is arguably clearer than what comes before it. Whereas the first paragraph requires, passively, "that all disputes [relating to Arreguin's employment] be arbitrated," the third paragraph spells out *who* must waive legal rights to make this happen. It spells out what is only implicit earlier on, that the company and Arreguin *both* waive their rights to take disputes relating to Arreguin's employment to court. Read this way, the third paragraph is consistent with and confirms the broad mutual promise in the first paragraph, to

arbitrate all of Arreguin's and Star's employment-related disputes (with two exceptions not relevant here).

Arreguin construes the agreement differently. He argues that if the agreement binds Star at all, it compels Star to forgo only a jury trial, rather than all resort to the courts. We think this interpretation is difficult to square with the broad language in the first paragraph (requiring that "all disputes . . . be arbitrated") and with the introductory language in the third paragraph characterizing the mutual waiver of the jury trial right as a "RESULT OF" the arbitration agreement. But in any event, to the extent Arreguin's construction is plausible and would render the contract so one-sided as to be unconscionable, that construction is disfavored. Where a contract is ambiguous, the law requires that we choose an interpretation that renders it "lawful, operative . . . and capable of being carried into effect, if it can be done without violating the intention of the parties." (Civ. Code, § 1643; see also *id.*, § 3541 ["An interpretation which gives effect is preferred to one which makes void"].) This is a rule of general applicability that our Supreme Court has applied specifically in construing an arbitration clause. "When an arbitration provision is ambiguous, we will interpret that provision, if reasonable, in a manner that renders it lawful . . . ." (*Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 682; see also *Roman*, *supra*, 172 Cal.App.4th at p. 1473.)

We acknowledge that another canon of construction, one requiring us to construe ambiguity in an adhesion contract against the drafter, points in the opposite direction. (See *Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 248 (*Sandquist*).) But this canon, codified in section 1654 of the Civil Code, must give way to the canon preferring a construction that renders the contract enforceable. Section 1654 directs an interpretation against the party whose drafting work causes the uncertainty, but only "[i]n cases of uncertainty not *removed by the preceding rules*." (Civ. Code, § 1654, italics added.) Section 1643, favoring a construction that renders the contract enforceable, precedes section 1654 in the statute book and therefore takes precedence over it. Applying section 1643 removes any ambiguity in this arbitration agreement, obviating the need for section 1654.

In sum, we conclude that (1) the agreement binds Star as well as Arreguin even though no representative of Star signed the document, and (2) the language of the agreement requires Star, as well as Arreguin, to submit all employment-related disputes to arbitration. Because this agreement imposes mutual obligations on employer and employee, it is not substantively unconscionable. (See *Armendariz, supra*, 24 Cal.4th at p. 117.) We therefore conclude that in spite of the procedural unconscionability, Star may enforce this arbitration agreement. With our colleague on the Second District Court of Appeal, we lament "that our decision today continues the recent march of our nation's jurisprudence toward eliminating the right to a jury trial (or any trial) in a large number of civil cases by its ever-extending embrace of arbitration." (*Saheli v. White Memorial Medical et al.* (Mar. 14, 2018, B283217) (Rubin, J., concurring) [2018 WL 1312501, at p. *14].) At least to the extent that this case involves Arreguin's individual claims against Star, we hold that the dispute must be arbitrated.

II. All Claims Must Go to Arbitration

Because this case involves more than Arreguin's individual claims against Star, two issues remain. First, may Arreguin pursue claims on behalf of a class of employees in his arbitration against Star? Second, must Arreguin's claims against Gallo also go to arbitration? For the reasons explained below, we hold that the availability of class claims in arbitration is for the arbitrator to decide, and that Arreguin's claims against Gallo must be arbitrated.

A

On the question of class claims, the California Supreme Court's recent decision in *Sandquist* controls. *Sandquist* is an employment class action case that holds whether the court or an arbitrator decides the availability of class procedures depends on the intent of the parties, as their contract is construed under state law. (*Sandquist, supra*, 1 Cal.5th at p. 241.) Nothing in the California Arbitration Act (CAA) or the Federal Arbitration Act (FAA) requires otherwise, the court determined. (*Sandquist*, at pp. 250, 260.) Although some federal appellate courts have reached a contrary conclusion, *Sandquist* follows the plurality in *Green Tree Financial Corp. v. Bazzle* (2003) 539 U.S. 444 in leaving to the

arbitrator the question whether claims can be litigated on behalf of a class, where an arbitration clause is broad but does not expressly mention class claims. (*Sandquist*, at pp. 251–260.) Like the *Green Tree* plurality, *Sandquist* concludes that "nothing in the FAA subjects the 'who decides' question to any contrary pro-court presumption." (*Sandquist*, at pp. 251, 260.)

Construing the contract before it, the *Sandquist* court begins with the arbitration agreement's broad language. One clause requires the parties to arbitrate "all claims 'arising from, related to, or having any relationship or connection whatsoever with" the employee's " 'association with the Company, whether based on tort, contract, statutory, or equitable law, or otherwise.' " (*Sandquist*, *supra*, 1 Cal.5th at p. 246, italics omitted.) The court reasons that Sandquist's class claims "plainly arise from" his employment, and "[t]he procedural question those claims present—whether Sandquist may pursue his claims on a class basis—directly arises from his underlying claims." (*Ibid*.) Therefore, the procedural issue also appears to satisfy the agreement's nexus requirement. (*Ibid*.) Based on the language of the agreement alone, the court concludes "the 'who decides' question" is likely arbitrable. (*Ibid*.)

But because the language of the agreement was not conclusive, the court goes on to discuss three other considerations, all of which point toward allowing the arbitrator to decide the availability of class claims. First is "the parties' likely expectations about allocations of responsibility." (*Sandquist*, *supra*, 1 Cal.5th at p. 246.) Given the "substantial additional cost and delay" associated with a rule that would require class claims to begin with a judicial determination of their arbitrability, the court expresses reluctance to assume the parties "expected or preferred a notably less efficient allocation of decisionmaking authority." (*Id*. at p. 247.) Second is the preference under state and federal law that "when the allocation of a matter to arbitration or the courts is uncertain, we resolve all doubts in favor or arbitration." (*Ibid*.) And third, given that the plaintiff employee was seeking to have the availability of class claims arbitrated, is the canon that "ambiguities in written agreements are to be construed against their drafters," a rule that " ' " applies with peculiar force in the case of a contract of adhesion." ' " (*Id*. at pp. 247–

248.) All three of these principles as well as the court's initial review of the language of the arbitration agreement supported the same result, namely that the availability of class procedures in the arbitration is for the arbitrator to decide.

We reach the same result in this case, and for the same reasons. The language of Star's arbitration agreement is broad, requiring "all disputes that may arise out" of or "be related to" Arreguin's employment, to "be arbitrated." The dispute as to whether Arreguin may bring claims on behalf of a class that includes other employees is, at least arguably, a claim that "arise[s] out" of and is "related to" his employment. In the face of ambiguity as to the precise reach of this language, we resort to the same principles the *Sandquist* court found dispositive, construing the arbitration agreement in favor of sending the procedural dispute to arbitration and against the party that drafted the adhesion contract. (See *Sandquist*, *supra*, 1 Cal.5th at pp. 247–248.) (In its briefing, Star requests that we determine the class claims do not survive referral to arbitration.) Under *Sandquist* all of Arreguin's claims against Star, the class claims as well as the individual claims, must go to arbitration, where the arbitrator will decide whether the class claims can proceed, and that decision will be subject only to limited judicial review. (See, e.g., *Oxford Health Plans LLC v. Sutter* (2013) 569 U.S. 564.)

B

As for Arreguin's claims against Gallo, Arreguin argues that Gallo has not proven it is entitled to enforce the arbitral agreement, to which it is not a signatory. Specifically, Arreguin argues that Gallo bears the burden of proof, and that Gallo fails to discharge that burden because it has not introduced evidence that (a) it is the alter ego of Star, (b) it had a pre-existing agency relationship with Star that allowed Star to enter into an arbitration agreement on its behalf, (c) it is an intended third-party beneficiary of Star's contract with Arreguin, or (d) Arreguin is otherwise estopped from litigating his claims against Gallo in court.

These are arguments that Arreguin failed to make in the trial court, where he defended Gallo's motion to compel arbitration only with the same arguments that he deployed against Star's motion, namely that the arbitration agreement between Star and

Arreguin was substantively and procedurally unconscionable. Because Arreguin did not argue in the trial court that Gallo was not entitled to enforce an agreement to which it was not a party, we will not consider that argument here. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847 [parties may not adopt new theories on appeal, as that is " ' "not only . . . unfair to the trial court, but manifestly unjust to the opposing litigant" ' "].) Considering a new argument for the first time on appeal is especially inappropriate here, where Arreguin challenges the sufficiency of the evidence, rather than raising a pure point of law. (*Ibid*.) As a result, Arreguin's claims against Gallo, like its claims against Star, must be arbitrated.

DISPOSITION

The decision of the trial court is reversed, and the case is remanded for further proceedings in accordance with this opinion. In the interests of justice, each party is to bear its own costs on appeal.

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TUCHER, J.*

We concur:

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KLINE, P.J.

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MILLER, J.

Arreguin v. E. & J. Gallo Winery et al. (A145553)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.