No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MYRNA DE JESUS
(Your Name) — PETITIONER

VS.

UNITEDHEALTH GROUP INC
DBA OPTUM 360 — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☑ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

US Supreme Court, US Federal District Court of Arizona, and US Ninth Appellate Circuit Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☑ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.

(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, MYRNA DE JESUS, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0.00	$ N/A	$	$ N/A
Self-employment	$ 0.00	$	$	$
Income from real property (such as rental income)	$ 0.00	$	$	$
Interest and dividends	$ 0.00	$	$	$
Gifts	$ 0.00	$	$	$
Alimony	$ 0.00	$	$	$
Child Support	$ 0.00	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$ 0.00	$	$	$
Disability (such as social security, insurance payments)	$ 0.00	$	$	$
Unemployment payments	$ 0.00	$	$	$
Public-assistance (such as welfare)	$ 0.00	$	$	$
Other (specify):	$ 0.00	$	$	$
Total monthly income:	$ 0.00	$	$	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE			$
			$
			$

4. How much cash do you and your spouse have? $ 35.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	$ 285.00	$
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model ONLY VEHICLE WAS PAWNED AND REPOSSESSED
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ N/A	$ N/A
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
NONE		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ 750.00	$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 110	$
Home maintenance (repairs and upkeep)	$	$
Food	$ 250	$
Clothing	$	$
Laundry and dry-cleaning	$ 115	$
Medical and dental expenses	$	$

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 350	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$	$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$	$
Life	$	$
Health	$	$
Motor Vehicle	$	$
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify):	$	$
Installment payments		
Motor Vehicle	$	$
Credit card(s)	$	$
Department store(s)	$	$
Other:	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify):	$	$
Total monthly expenses:	$	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

I DON'T KNOW. I AM LOANING MONEY FROM FAMILY MEMBERS TO LIVE.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I AM UNEMPLOYED UNTIL NOW. I LOAN MONEY FROM FAMILY MEMBERS ONLY FOR MY SURVIVAL.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: JANUARY 08, 20 25

BY MIRNA O. JESUS

John R Campbell
Notary Public, State of Florida
My Commission Expires 07/18/2025
Commission No. HH 149526

1/28/25

_____
(Signature)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MYRNA DE JESUS,
Petitioner,

v.

UNITEDHEALTH GROUP dba
Optum360 Services Inc.,
Respondent.

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

MYRNA DE JESUS
Pro se
1267 Limpkin Lane
Middleburg, Fl 32068
321-507-0971
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QUESTION PRESENTED

Does the Federal Arbitration Act allow enforcement of an employment arbitration agreement deemed unconscionable under state law, especially when the arbitration process and resulting award violate fundamental principles of fairness and justice?

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I. PETITION FOR A WRIT OF CERTIORARI

Myrna de Jesus petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in her case.

II. DECISION BELOW

The Ninth Circuit's unpublished opinion noted that its mandate and memorandum is "NOT FOR PUBLICATION" and is attached as Appendix A & B.

III. JURISDICTION

The Ninth Circuit entered judgment on October 29, 2024. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court's jurisdiction is invoked under 28 USC § 1254(1).

IV. STATUTORY PROVISIONS INVOLVED

This case presents an issue of serious national importance that would serve as a precedent. The Ninth Circuit demonstrated a clear and heightened grave abuse of discretion, and a violation of recognized principles of law that deprived Petitioner of her liberty interest without due process of law. The appellate court's judgment conflicts with 9 U.S. Code § 2, 10, &11, the 6th and 14th Amendment, and Contract Clause (Article I, Section 10.

V. STATEMENT OF THE CASE

Petitioner is seeking justice from this Court as the last sole protector to obtain a true interpretation of the conflicts law concerning the unconscionability of employment contracts and the confirmation of the arbitral award procured from undue means.

Petitioner, s former employee of UnitedHealth Group, presents her case to this Court to address several issues that center primarily on the confirmation of the arbitral award. unconscionability of employment contract, wrongful termination, slander per se defamation, breach of privacy, and public policy.

Petitioner is contesting the enforceability of the arbitral award as it falls within the prescription of §§ 10 and 11 and should be vacated (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S. Ct. 1396, 170 L. Ed. 2d 254, 21 Fla. L. Weekly Supp. 121 (2008). This Court held that "a party may apply to the court to ...vacate an arbitral award." (*Badgerow v. Walters*, 142 S. Ct. 1310 (2022)).

On April 10, 2020, De Jesus received a job offer from UnitedHealth Group dba Optum360 Services, Inc., a health insurance company. UnitedHealth Group had established a contract with Dignity Health, engaging them as a vendor to manage Dignity Health Corporation's Admission and Billing Department under the business name of Optum360 Services, Inc.

De Jesus received a job offer and was instructed to complete the onboarding process online. She signed all documents, including UnitedHealth Group 's arbitration agreement, to be employed as a Patient Coordinator and Compliance Registrar. Assigned to St. Joseph's Hospital and Medical Center, she worked from 7:30 am to 4:30 pm, primarily interacting with patients using mobile WOW equipment. Her on-site supervisors were Timothy Blanton (ER supervisor), Justina Cookston (daytime ER supervisor), and William Yates (evening ER supervisor).

Due to the COVID-19 pandemic, UnitedHealth Group's management required all personnel making direct contact with patients to wear masks, as mandated by Dignity Health. However, office workers and those eating inside the hospital were not required to wear masks.

B. Statement of Proceedings

1. De Jesus' Wrongful Termination and UnitedHealth Group's Defamatory Statements

On March 1, 2021, two incidents occurred. Around 9:30 am, De Jesus was asked to meet with Manager Sarah Hernandez after complaints from Dignity Health employees. Hernandez informed De Jesus those multiple complaints had been received, including that De Jesus was not wearing a mask on the floors, was eating yogurt without a mask near the elevator, rolled her eyes when asked to wear a mask while eating, and was consistently rude to patients. Additionally, two Dignity Health nurses alleged that De Jesus screamed inappropriate language (fucking bitch) at them in front of patients and other hospital personnel on the 7th floor of the Heart/Lung/Thoracic Unit. As a result, Hernandez reprimanded De Jesus and sent her home. The reprimand was witnessed by Bonnie Matthews, Erica Galvez, and Sharon Conover.

On March 2, 2021, De Jesus was asked by Hernandez to report to work. De Jesus was about to start when Hernandez asked her to see her immediately. Inside Hernandez's office, Dignity Health's top management was present. Hernandez pronounced these words, "UnitedHealth's HR has no choice. They made a request." She added, "They don't like you! They don't want to see you! And they don't want

you on their property!" She advised De Jesus that she has the option of appealing her termination. De Jesus' termination was witnessed by the same office co-workers namely the: new Patient Admitting Director Sahadeo Hariprasad.

On March 16, 2021, De Jesus filed an IDR appeal to dispute her termination, acknowledged by Nicolyn Neighbors, UnitedHealth Group's Senior Case Manager. A conference call with De Jesus, Nicolyn Neighbors, and VP Deborah Watson was held on March 30, 2021, to discuss the appeal. On May 12, 2021, VP Watson denied the appeal, citing a special request from Dignity Health that De Jesus must not return to the facility. VP Watson's letter mentioned allegations that De Jesus used inappropriate language and denied the presence of surveillance cameras to review the footage of the incidents.

2. UnitedHealth Group's Unconscionable Employment Contract and Arbitration

On June 10, 2021, De Jesus initiated her arbitration. A month later, UnitedHealth Group acknowledged the request. The American Arbitration Association (AAA) assigned the case number 01-21-0004-6662 and recommended John Balitis as Arbitrator. Petitioner, proceeding pro se, agreed. But UnitedHealth Group's attorney Kristy Peters filed a motion to dismiss, attacking the petitioner's claims for not stating a claim, exhausting remedies, and being barred due to estoppel and laches.

On October 14, 2021, during a telephonic conference with Arbitrator Balitis, all parties agreed on a Management Scheduling Order. Arbitrator Balitis allowed De Jesus to amend her complaint informally. Also, On January 14, 2022,

UnitedHealth Group's counsel submitted a revised Motion to Dismiss, arguing petitioner's complaint failed to state a claim, among other points. She filed a motion to amend her complaint on February 16, 2022, adding new claims. However, on March 23, 2023, Arbitrator Balitis dismissed De Jesus' complaints with prejudice, citing legal insufficiency, and denied her motion to amend.

Petitioner argues that the arbitration was biased and deceitful, asserting that the process was unfair and with partiality as per FAA regulations.

3. **The District Court's Affirmance of the Arbitral Award and Dismissal Ruling**

On April 1, 2022, the petitioner filed a complaint with the Federal District Court of Arizona, requesting a jury trial and a trial de novo for $7,000 in damages. On May 5, 2022, the court dismissed the petitioner's federal court form complaint but granted her leave to file a First Amended Complaint within 30 days. Petitioner filed her First Amended Complaint on June 1, 2022, and the court granted only her defamation claim on June 9, 2022 (Appendix C, 1c-7c).

On July 7, 2022, U filed a Motion to Dismiss and Petition for Confirmation of the Arbitration Award. Petitioner responded on July 15, 2022, with a memorandum and Motion for Trial de Novo, Petition, and Motion for Vacatur of the Arbitration Award, arguing that the employment contract was unconscionable and the arbitration proceeding was biased and corrupt.

On September 26, 2023, the District Court stayed the case. However, on January 23, 2023, the court dismissed the case with prejudice, granted UnitedHealth Group's motions, and denied De Jesus's motions for Leave to file

Plaintiff's Sur-reply, Trial de Novo, and to Vacate the Arbitration Award (Appendix c8-18c). The court concluded that (a) De Jesus's defamation claim was barred by the Arbitration Agreement, (b) De Jesus failed to show circumstances warranting vacatur under 9 USC § 9, and (c) De Jesus's claim of unconscionability of the employment contract was insufficient. It determined that the employment contract, which included the arbitration clause, was an adhesion contract that is binding and irrevocable.

The petitioner asserts that the district court egregiously erred. The adhesion contract, crafted solely by UnitedHealth Group, is unconscionable per se. In *Dueñas v. Life Care Centers of America, Inc.*, the Arizona Supreme Court held that an adhesion contract becomes invalid and unconscionable based on factors such as age, education, intelligence, business acumen, experience, relative bargaining power, who drafted the contract, and whether the terms were explained to the weaker party. These factors ensure that a contract is genuine and represents a voluntary meeting of the minds (*Dueñas v. Life Care Centers of America, Inc.*, 236 Ariz. at 135, ¶ 8, 336 P.3d at 768 (App. 2014)). This ruling was recently upheld by the Arizona appellate court in *Rizzio v. Surpass Senior Living LLC*, which affirmed that an adhesion contract must be evaluated for fairness and voluntariness. It was held that establishing that an adhesion contract can be invalidated if it fails to meet these criteria (*Rizzio v. Surpass Senior Living LLC*, 459 P.3d 1201, 248 Ariz. 266 (Ariz. Ct. App. 2020)).

Moreover, the AZ law does not require the petitioner to prove both procedural and substantive unconscionability because "[e]ither doctrine can provide an independent defense to enforceability" (*Rizzio*, 459 P.3d 1201, 248 Ariz. 266 (Ariz. Ct. App. 2020)). Specifically, it held that:

> "A]ge, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms were possible, ... Whether the contract was separate from other paperwork, whether the contract used conspicuous typeface ... and whether the contract was signed hurriedly and without explanation in emergency circumstances...there was no "inconspicuous bundl[ing] with other contractual terms," and the agreement did not serve "as a precondition to care." (*Ibid*)).

Additionally, this Court affirmed that "State law, not federal law, provides the standard for unconscionability. Whether an arbitration agreement [under the FAA] is valid, irrevocable, and enforceable is governed by state law" (*Ibid*). The petitioner contends that no one in the company explained the content of the employment contract to her, which UnitedHealth Group assents.

4. **The Ninth Circuit's Not for Publication Memorandum and Affirmance of the District Court's Ruling**

On appeal, the petitioner challenged the district court's affirmation of the arbitral award, the unconscionability of the employment contract, and the dismissal of the case with prejudice. The Ninth Circuit exhibited a clear and heightened grave abuse of discretion by affirming the district court's judgment under a "Not for Publication Memorandum."

Regarding the unconscionability of the contract, the FAA considers unconscionability to be a generally applicable contract defense that may render an

arbitration provision unenforceable (*Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 116 S. Ct. 1652 (1996)). In this context, the Ninth Circuit ignored its own holding that Arizona State law controls the unconscionability of employment arbitration contracts (*Chalk v. T-Mobile USA, Inc.*, 560 F.3d 1087 (9th Cir. 2009)). The Arizona Appellate court also held that "The rule precludes the enforcement of a contract provision if one party has reason to believe that the other party would not have entered the contract had they known that it contained the provision." (Adopting Restatement (Second) of Contracts § 211, which sets forth the reasonable expectations rule) (*Rizzio*, 459 P.3d 1201, 248 Ariz. 266 (Ariz. Ct. App. 2020)).

Furthermore, the Ninth Circuit judgment contradicted 9 USC § 10, Arizona Revised Statutes (ARS) § 12-3023, and 9 USC §§ 10 & 11. The arbitrator's actions demonstrated allegiance to UnitedHealth Group. After the dismissal of the case, the petitioner discovered that the arbitrator was the chairman of his law office and served as U's retainer lawyer, handling all the company's legal issues. Consequently, the arbitral award was procured by fraud (see *Sprewell v. Golden State Warriors*, 266 F.3d 979 (9th Cir. 2001)).

VI. REASONS FOR GRANTING THE WRIT

1. This Court's reasoning in *Howsam v. Dean Witter Reynolds, Inc.*, *Badgerow v. Walters,* and *Doctor's Associates, Inc.* v. *Casarotto* are clear

This Court ruled that "arbitration is a matter of the contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit [emphasis added]." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002). In addition, this Court also clearly ruled that the "state law . . . is

applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contract" (*Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 116 S. Ct. 1652 (1996). Finally, "A court "must place [the] agreement [ ] on an equal footing with other contracts (*Ibid*)).

2. **The Arizona Courts Common Law and Multiple Reasonings About contracts as upheld in *Hill-Shafer Partnership v. Chilson Family Trust, Dueñas v. Life Care Ctrs. of Am., Inc.,* and *North Valley Emergency Specialists v. Santana, and Rizzio v. Surpass Senior Living LLC., Inc.***

The unconscionability of UnitedHealth Group 's contract (procedural and substantive) involving arbitration agreements undermines the fairness and integrity of the arbitration process, as established by several Arizona State common laws and court rulings. UnitedHealth Group 's contract is excessively one-sided, unfair, and oppressive, demonstrating significantly more power and bargaining strength to the Petitioner. Consequently, the arbitral award should be vacated as it was procured by corruption, fraud, or undue means (*Dueñas.*, 236 Ariz. at 135, ¶ 8, 336 P.3d at 768 (App. 2014); *Rizzio*, 459 P.3d 1201, 248 Ariz. 266 (Ariz. Ct. App. 2020)). In the context of the Federal Arbitration Act (FAA) definition, both lower courts erred in failing to recognize that UnitedHealth Group's employment contract was designed to shield its arbitrary actions or methods that are excessive, unfair, or unreasonable, ultimately leading to the arbitral award from its business partner, arbitrator Balitis (see *Move, Inc. v. Citigroup Glob. Mkts., Inc.*, 840 F.3d 1152 (9th Cir. 2016)).

Additionally, in another holding, the AZ Supreme Court held that "parties could not be compelled to arbitrate their claims" (*North Valley Emergency*

Specialists v. Santana, 208 Ariz. 301, 93 P.3d 501, 430 Ariz. Adv. Rep. 41 (Ariz. 2004)). It further stated: "Although we agree Arizona has a strong public policy favoring arbitration, the plain language of ARS § 12-1517 carves out an exception to that policy (*North Valley Emergency Specialists v. Santana*, 208 Ariz. 301, 93 P.3d 501, 430 Ariz. Adv. Rep. 41 (Ariz. 2004)). The court also clearly expressed that "Although we agree Arizona has a strong public policy favoring arbitration, the plain language of ARS § 12-1517 carves out an exception to that policy (*Ibid)*

Finally, petitioner asserts another AZ court's clear holding. It held: "It is well-established that before a binding contract is formed, the parties **must mutually consent to all material terms [emphasis added].**" *Hill-Shafer Partnership v. Chilson Family Trust*, 165 Ariz. 469, 799 P.2d 810 (Ariz. 1990)

3. The Case is Exceptionally and Nationally Relevant

This case could set important legal precedents regarding how courts handle and evaluate claims of fraud, undue means, and unconscionability in arbitration agreements. The outcome can influence future cases and provide clearer guidelines for what constitutes a fair and enforceable arbitration agreement.

Exposing and addressing these issues is crucial for protecting the rights of parties involved in arbitration. It ensures that parties, especially those with less bargaining power, are not unfairly disadvantaged or coerced into agreements that are detrimental to their interests which violates their 6th and 14th Amendment, and the Contract Clause (Article I, Section 10.

II. CONCLUSIONS AND PRAYER FOR RELIEF

For the foregoing reasons, the petitioner respectfully submits that the decisions of the lower courts were in error and warrant review by this Honorable Court. The issues presented are of significant importance, affecting not only the parties involved but also setting a precedent that impacts broader legal principles and public interests. Therefore, the petitioner urges this Court to grant certiorari to rectify the miscarriage of justice and to provide clarity and guidance on the legal questions at hand.

Prayer for Relief

WHEREFORE, the petitioner respectfully prays that this Court:

1. Grant the writ of certiorari to review the judgment of the lower court.
2. Reverse the decision of the lower court and remand the case for further proceedings consistent with the opinion of this Court.
3. Grant such other and further relief as may be just and proper under the circumstances.

Respectfully submitted,

MYRNA DE JESUS
Pro Se
1267 Limpkin Lane
Middelburg, FL 32068
(321) 507-0971

This 24th day of January 2025

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 20 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MYRNA DE JESUS,

Plaintiff - Appellant,

v.

UNITEDHEALTH GROUP, INC.,
DBA Optum360 Services, Inc.,

Defendant - Appellee.

No. 23-15206

D.C. No. 2:22-cv-00532-DJH
U.S. District Court for Arizona, Phoenix

MANDATE

The judgment of this Court, entered October 29, 2024, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

APPENDIX B

WARNING: AT LEAST ONE DOCUMENT COULD NOT BE INCLUDED!
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Selected docket entries for case 23−15206

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Filed	Document Description	Page	Docket Text
10/29/2024	23		FILED MEMORANDUM DISPOSITION (MARK J. BENNETT, BRIDGET S. BADE and DANIEL P. COLLINS) All pending motions are denied. AFFIRMED. FILED AND ENTERED JUDGMENT. [12912748] (AH)
	23 Memorandum Disposition	2	
	23 Post Judgment Form **DOCUMENT COULD NOT BE RETRIEVED!**		

NOT FOR PUBLICATION

FILED

OCT 29 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MYRNA DE JESUS,

Plaintiff-Appellant,

v.

UNITEDHEALTH GROUP, INC., DBA Optum360 Services, Inc.,

Defendant-Appellee.

No. 23-15206

D.C. No. 2:22-cv-00532-DJH

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Submitted October 29, 2024**

Before: BENNETT, BADE, and COLLINS, Circuit Judges.

Plaintiff-Appellant Myrna De Jesus appeals pro se from the district court's dismissal of her claims for breach of contract and wrongful termination against Defendant-Appellee UnitedHealth Group, Inc. dba Optum360 Services, Inc. ("Optum"), as well as from the court's confirmation of an arbitration award in favor of Optum. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes that this case is suitable for decision without oral argument. *See* FED. R. APP. P. 34(a)(2)(C).

I

After screening De Jesus's original complaint under 28 U.S.C. § 1915(e)(2)(B), the district court dismissed that complaint with leave to amend. De Jesus filed an amended complaint, and the court thereafter dismissed, at the screening stage, all of her claims except for defamation. On appeal, De Jesus only challenges the screening-stage dismissal of her claims for breach of contract and wrongful termination. We review de novo the dismissal of these claims. *See Doe v. Garland*, 17 F.4th 941, 944 (9th Cir. 2021).

A

The district court correctly dismissed De Jesus's breach of contract claim on the ground that the operative complaint failed to identify "what specific part" of her employment contract "ha[d] been breached." To state a breach of contract claim under Arizona law, a plaintiff must identify the contractual obligation that the defendant allegedly failed to fulfill. *See Thomas v. Montelucia Villas, LLC*, 302 P.3d 617, 621 (Ariz. 2013) ("To bring an action for the breach of the contract, the plaintiff has the burden of proving the existence of the contract, its breach and the resulting damages." (citation omitted)). De Jesus's amended complaint failed to do so, even after the district court specifically noted this deficiency in dismissing the original complaint. On appeal, De Jesus contends, without any accompanying citation to the record, that Optum breached the promise in the

"company manual" that she would receive "fair and equal treatment." But De Jesus may not seek to amend the complaint on appeal, *see Ecological Rights Found. v. Pacific Gas & Elec. Co.*, 713 F.3d 502, 510–11 (9th Cir. 2013), and, in any event, this new allegation still fails to allege sufficient facts to establish a plausible claim for breach of contract, *see Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

B

The district court also correctly dismissed De Jesus's claim for wrongful termination. In her amended complaint, De Jesus alleged that her termination was wrongful because it had been based on race and gender, but the complaint was bereft of any factual allegations that would support a plausible inference that De Jesus was terminated based on such grounds. *See Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." (citation omitted)). On appeal, De Jesus contends that the hospital at which she was assigned to work had demanded that Optum terminate her and that Optum wrongfully acquiesced in that demand without an adequate investigation. Again, De Jesus may not amend her complaint on appeal, but in any event, she has failed to establish that termination of an at-will employee based on client dissatisfaction, without more, is wrongful under Arizona law or that Arizona law required more process than she was provided in connection

with her termination.

Accordingly, we affirm the district court's dismissal of De Jesus's claims for breach of contract and wrongful termination. *See Harper v. State*, 388 P.3d 552, 554 (Ariz. Ct. App. 2016) (noting that Arizona's Employment Protection Act "sets out the limited circumstances in which an employee can bring a wrongful termination action in Arizona" (citations omitted)).

II

De Jesus's defamation claim had been rejected by an arbitrator, and De Jesus does not dispute that, if the arbitrator's decision on that score is confirmed, then that claim is barred. De Jesus argues, however, that the district court erred in confirming the arbitration award in Optum's favor.

A

Under Arizona law, arbitration agreements are generally enforceable, but substantive or procedural unconscionability may be raised as a defense to enforcement. *Dueñas v. Life Care Ctrs. of Am., Inc.*, 336 P.3d 763, 767–70 (Ariz. Ct. App. 2014). We review de novo whether the arbitration agreement here was invalid on grounds of unconscionability. *See Coneff v. AT&T Corp.*, 673 F.3d 1155, 1157 (9th Cir. 2012).

Although De Jesus asserts that the arbitration agreement is "one-sided," she points to no specific terms of the agreement that could be said to "be overly

oppressive or unduly harsh to one of the parties." *Clark v. Renaissance West, LLC*, 307 P.3d 77, 79 (Ariz. Ct. App. 2013). Any claim of substantive unconscionability therefore fails.

As to procedural unconscionability, De Jesus argues that she was required to sign the arbitration agreement as a condition of her employment, that the agreement was never explained to her, and that "she did not receive a copy" at the time she electronically agreed to it. The contention that De Jesus did not receive a copy of the agreement was not raised below and is contradicted elsewhere in De Jesus's opening brief, where she acknowledges that the arbitration agreement was included among a set of documents that she signed during the electronic "onboarding process" "without completely reading and comprehending all the documents." But even if De Jesus did not retain or download a copy of the agreement during that process, she concededly had an opportunity to review the agreement before signing it. Given that De Jesus had an opportunity to review the agreement and assented to it, the fact that her assent was a condition of her employment does not suffice to establish procedural unconscionability. *See Rizzio v. Surpass Senior Living LLC*, 459 P.3d 1201, 1206 (Ariz. Ct. App. 2020) (rejecting a procedural unconscionability challenge to an arbitration agreement and holding that a "standardized adhesion contract" is "not *per se* unconscionable"; that Arizona law does not "require[] a drafter to explain the provisions of

standardized contracts"; and that "the post-hoc regret of a party to such a contract" does not "suffice to demonstrate unconscionability"), *aff'd in part and vacated in part on other grounds*, 492 P.3d 1031, 1038 (Ariz. 2021) (affirming the court of appeals' opinion in all respects except for five paragraphs concerning other issues).

B

De Jesus also contends that the arbitration award here should not have been confirmed. We review de novo the district court's decision to confirm the award, but any factual findings underlying that decision are reviewed only for clear error. *See First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 947–48 (1995).

De Jesus argues that the district court should have vacated the award due to partiality and corruption on the part of the arbitrator. *See* 9 U.S.C § 10(a) (stating that an arbitration award may be vacated, *inter alia*, "where the award was procured by corruption, fraud, or undue means" or where there was "evident partiality or corruption in the arbitrators"). To the extent that this contention is based on the fact that other members of the arbitrator's law firm represented UnitedHealth in other matters and that attorneys from Optum's law firm had appeared before the arbitrator in other matters, De Jesus concedes that the arbitrator disclosed these facts before he was selected and that she failed to object. Because there was no failure to disclose, De Jesus can establish "evident partiality" only by showing "specific facts indicating actual bias toward or against a party."

Lagstein v. Certain Underwriters at Lloyd's, London, 607 F.3d 634, 645–46 (9th Cir. 2010) (citation omitted). De Jesus argues that the arbitrator's decisions are so obviously wrong that they suffice to demonstrate evident partiality, but after examining those decisions in the context of De Jesus's submissions to the arbitrator, we reject this contention as unsupported. For similar reasons, we reject De Jesus's contention that the award should be vacated under 9 U.S.C. § 10(a)(4) on the ground that the arbitrator "exceeded [his] powers" in rendering the award. *See Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) ("We have held that arbitrators 'exceed their powers' in this regard not when they merely interpret or apply the governing law incorrectly, but when the award is 'completely irrational,' or exhibits a 'manifest disregard of law.'" (citations omitted)). Lastly, in light of these conclusions, we discern no basis for concluding that there was "evident . . . corruption" in the arbitrator's rendering of the award. *See Lagstein*, 607 F.3d at 646–47 (citation omitted).

We therefore affirm the district court's confirmation of the arbitration award.[1]

AFFIRMED.

[1] All pending motions are denied.

APPENDIX C

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Myrna de Jesus, Plaintiff, v. UnitedHealth Group, Defendant.	No. CV-22-00532-PHX-DJH **ORDER**

There are four motions pending before the Court that concern the enforceability of an arbitration award issued against Plaintiff Myrna de Jesus ("Plaintiff"). First is a "Motion to Dismiss"[1] (Doc. 11) filed by Defendant UnitedHealth Group doing business as Optum360 Services Incorporated ("Defendant"). Therein, Defendant includes its Petition for Confirmation of Arbitration Award ("Petition to Confirm Award") (*Id*). Second is Plaintiff's "Motion for Leave" (Doc. 25) to refile her previously stricken Supplemental Response as a sur-reply to the Motion to Dismiss.[2] Third is Plaintiff's "Motion for Trial De Novo"[3] (Doc. 15). Fourth is Plaintiff's Motion to Vacate Arbitration Award ("Motion to Vacate Award")[4] (Doc. 17). All matters are fully briefed.

[1] Plaintiff filed a Response (Doc. 16) and Defendant filed a Reply (Doc. 18). Plaintiff had filed a Supplemental Response (Doc. 21) but the Court struck it from the record (*See* Doc. 28).

[2] Defendant filed a Response (Doc. 29).

[3] Defendant filed a Response (Doc. 19) and Plaintiff filed a Reply (Doc. 23).

[4] Defendant filed a Response (Doc. 20) and Plaintiff filed a Reply (Doc. 23).

On August 30, 2022, the Court stayed the present action in light of these pending motions. (*See generally* Doc. 28). For the following reasons, the Court grants Defendant's Motion to Dismiss and Petition for Confirmation of Arbitration Award, and denies Plaintiff's Motion for Leave to File Her Sur-reply, Motion for Trial De Novo, and Motion to Vacate Arbitration Award.

I. Background

This action concerns an employment dispute stemming from Defendant's termination of Plaintiff. Defendant is a healthcare and insurance company that hired Plaintiff in April 2020 to work as a Patient Coordinator. (Doc. 8 at 4, ¶¶ 1–2). Defendant assigned Plaintiff to work at non-party Dignity Health St. Joseph's Hospital and Medical Center ("Dignity Health"). (*Id.*)

Pursuant to her offer letter and as a condition of her employment (Doc. 11-1 at 25), Plaintiff electronically executed Defendant's Arbitration Policy (the "Arbitration Agreement" or "Agreement") (*Id.* at 31–37) when she was onboarded. Relevant in part, the Agreement provides:

> The Federal Arbitration Act (9 U.S.C. § 1 et seq.) shall govern this Policy. All disputes covered by the Policy shall be decided by an arbitrator through arbitration, and not by way of the court or jury trial.
>
> [] SCOPE OF POLICY
>
> . . . .
>
> [Defendant] and [Plaintiff] mutually consent to the resolution by arbitration of all the claims and controversies, past, present, or future, that [Plaintiff] may have against [Defendant] or [Defendant] may have against [Plaintiff], which arise out of or relate to [Plaintiff's] employment, application and selection for employment, and/or termination of employment.
>
> . . . .
>
> Subject to the specific exclusions below, the claims covered by the Policy include, but are not limited to: claims for unfair competition and violation of trade secrets; claims incidental to the employment relationship but arising after that relationship ends (for example, claims arising out of or related to post-termination defamation or job references and claims arising

> out of or related to post-employment retaliation); claims derived from or that are dependent on the employment relationship; claims are derivative of or inextricably intertwined with any claims of the employee; claims for wages or other compensation due (including but not limited to, minimum wage, overtime, meal and rest breaks, waiting time penalties, vacation pay and pay on separation); claims for breach of any contract or covenant (express or implied); tort claims; common law claims; equitable claims; claims for discrimination and harassment; retaliation claims; and claims for violation of any federal, state or other governmental law, statute, regulation, or ordinance . . . .
>
> . . .
>
> [] ARBITRATION RULES AND PROCEDURES
>
> The Arbitration will be administered by the American Arbitration Association ("AAA") and except as provided in this Policy, shall be in accordance with the then-current Employment Arbitration Rules of the AAA ("AAA Rules"). The AAA Rules are Available via the Internet at www.adr.org/employment[.]

(*Id.* at 31–32). It also states that arbitration awards "shall be final and binding upon all parties to the arbitration." (*Id.* at 32).

A. Plaintiff's dispute

On March 1, 2021, Defendant received a request from Dignity Health to terminate Plaintiff.[5] (Doc. 8 at 11, ¶ 16, 13, ¶ 23). Dignity Health employees complained to Plaintiff's Director alleging Plaintiff "screamed profanities" at them while "in the presence of patients and other hospital personnel at the Heart/Lung/Thoracic Unit." (*Id.* at 9, ¶ 12). Defendant terminated Plaintiff based on these allegations. (*Id.* at 10–11, ¶¶ 15–16). In her termination meeting on March 2, 2021, Plaintiff claims her Director said "Dignity Health made a request. [Defendant's] HR has no choice but to terminate your employment. They don't want to see you! And they don't want you to be in [sic] their property! You can appeal your termination." (*Id.* at 11, ¶ 16)

Plaintiff filed an Internal Dispute Resolution ("IDR") appeal of her termination

[5] Plaintiff also filed suit against Dignity Health Corporation. *See de Jesus v. Dignity Health Corporation*, No. CV-21-00926-PHX-DWL (D. Ariz).

with Defendant's HR department on March 16, 2021 (*Id.* at 12, ¶ 19), which was denied. (*Id.* at 13, ¶ 23). Under the Arbitration Agreement, Plaintiff submitted a demand for arbitration (Doc. 11-1 at 39–45) as her last administrative remedy to appeal her termination. (Doc. 8 at 14, ¶¶ 24–25).

B. Arbitration Proceedings and Award

Plaintiff filed her original Arbitration Demand and Complaint on June 10, 2021, with the AAA. (Doc. 11-1 at 39–45). Her action was filed under Case No. 01-21-0004-6662 (the "Previous Arbitration") and arbitration was conducted by Arbitrator John Balitis (the "Arbitrator"). (Doc. 8 at 14, ¶ 25–26). In accordance with the deadlines of the Initial Arbitration Management Conference Order, Plaintiff filed an Amended Demand and Complaint on December 5, 2021. (Doc. 11-1 at 47–55). Therein, Plaintiff alleged claims for wrongful termination, defamation of character, and willful breach of privacy. (*Id.* at 52–53). Plaintiff moved for leave to file a Second Amended Demand and Complaint (Doc. 18-3), which the Arbitrator denied. (*Id.* at 57–60).

On January 14, 2022, Defendant submitted a Motion to Dismiss Plaintiff's Amended Demand and Complaint for failure to state a claim upon which relief can be granted. (Docs. 8 at 15, ¶ 31; 11-1 at 62). On March 23, 2022, the Arbitrator issued an order (the "Arbitration Award" or "Award") (Doc. 11-1 at 62–68) that granted Defendant's motion and:

(1) dismissed all of Plaintiff's claim with prejudice;
(2) ordered $2,950.00 in AAA administrative fees;
(3) ordered $9,037.50 as compensation to the Arbitrator;
(4) ordered the parties to bear their own respective attorneys' fees and other related costs; and
(5) ordered full settlement of all claims.

(*Id.* at 68).

On June 1, 2022, Plaintiff filed her Amended Complaint ("FAC") (Doc. 8) and sought relief from this Court for (1) defamation; (2) breach of contract; (3) wrongful termination based on discrimination; (4) wrongful termination of benefits; (5) intentional

infliction of emotional distress; and (6) false light invasion of privacy. (Doc. 9 at 4–5). Upon screening the FAC pursuant to 28 U.S.C.§ 1915(e)(2), the Court dismissed the FAC's latter five claims. (*Id.* at 6). The only claim remaining before the Court is Plaintiff's claim for defamation. (*Id.* at 3, 6).

II. Discussion

To address these pending motions, the Court must consider the nature of the Arbitration Agreement, Previous Arbitration, and Arbitration Award. The parties agree that this matter is governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) ("FAA"). (Docs. 19 at 2, n.1; Doc. 11-1 at 31). Defendant's Motion to Dismiss primarily focuses on the validity of the Arbitration Agreement. Defendant argues Plaintiff's defamation claim should be dismissed because it is subject to the Agreement and was already decided in the Previous Arbitration. Defendant's accompanying petition seeks an order enforcing the Arbitration Award pursuant to 9 U.S.C. § 9. Plaintiff argues the Agreement is unenforceable and so the Award should be vacated. As a procedural matter, Plaintiff seeks leave to file a sur-reply to the Motion to Dismiss to expand on her arguments.

Plaintiff's Motions for Trial De Novo and to Vacate Award contest the validity of the Previous Arbitration and resulting Award. In her Motion for Trial De Novo, Plaintiff argues the Previous Arbitration "constitutes corruption, unfairness, fraud, and obvious partiality" and she is aggrieved by the Award. (Doc. 15 at 2). Thus, she seeks a Trial De Novo pursuant to 9 U.S.C. § 10. In her Motion to Vacate Award, Plaintiff makes the same arguments and seeks vacation of the Arbitration Award. (Doc. 17 at 3–5). Defendants represent that judicial review is improper under the FAA because Plaintiff's attempt to vacate the Award is untimely or, in the alternative, Plaintiff does not show any of the limited circumstances under 9 U.S.C. § 10 apply to warrant vacatur.

The Court will first consider the Plaintiff's Motion for Leave to address the procedural matters concerning Defendant's Motion to Dismiss. The Court will then consider the merits of the Motion to Dismiss to determine whether the Arbitration Agreement can be enforced to bar Plaintiff's defamation claim. Last, the Court will

consider Defendant's Petition to Confirm Award with Plaintiff's Motions for Trial De Novo and to Vacate Award together to determine whether the Arbitration Award is valid.

A. Motion for Leave

Plaintiff requests leave to refile her previously stricken Supplemental Response as a sur-reply to Defendant's Motion to Dismiss. *See supra* at n.1. Neither the Federal Rules of Civil Procedure nor the District's Local Rules entitle a party to a sur-reply as a matter of right. *See* LRCiv 7.2. Indeed, "sur-replies are highly disfavored and permitted only in extraordinary circumstances." *Finley v. Maricopa Cty. Sheriff's Office*, 2016 WL 777700, *1 n.1 (D. Ariz. Feb. 29, 2016). The Court may use its discretion in allowing a sur-reply "where a valid reason for such additional briefing exists, such as where the movant raises new arguments in its reply brief." *Fitzhugh v. Miller*, 2020 WL 1640495, *9 (D. Ariz. Apr. 2, 2020) (citing *Hill v. England*, 2005 WL 3031136, *1 (E.D. Cal. Nov. 8, 2005)).

The arguments that Plaintiff seeks to assert through a sur-reply are identical to those in her previously stricken Supplemental Response. The Court already found those arguments to be "unnecessary." (Doc. 28 at 1). Moreover, Plaintiff has had ample opportunities to set forth her intended arguments in her Motions for Trial De Novo and to Vacate Award. Thus, the Court will deny Plaintiff's Motion for Leave to file a sur-reply.

B. Motion to Dismiss – Validity of the Arbitration Agreement

In its Motion to Dismiss, Defendant requests that this Court (1) dismiss Plaintiff's defamation claim with prejudice pursuant to the Arbitration Agreement; and (2) confirm the Arbitration Award. Plaintiff argues her claim is not subject to dismissal because she signed the Agreement electronically, it is one-sided, and is fraudulent under the Federal Statutes of Fraud 18 U.S.C. § 1001(a)(1).

1. 12(b)(6) Standards

Though not explicitly stated, the Court construes the Motion to Dismiss as a Federal Rules of Civil Procedure 12(b)(6) motion for failure to state a claim because Plaintiff's defamation claim is barred by the Arbitration Agreement and has indeed been arbitrated. *See e.g.*, *Leal v. Chapman Chevrolet, L.L.C.*, 2007 WL 1576001, at *2–3 (D. Ariz. May

30, 2007). If Plaintiff's claim is arbitrable, the district court "will never reach the merits of the parties' controversy. Rather, [the district court's] jurisdiction is limited to compelling arbitration, *see* 9 U.S.C. § 4, and reviewing any future arbitration award, *see* 9 U.S.C. §§ 9-12." *Id.* (citations in original)

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a complaint. *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011). Complaints must contain a "short and plain statement showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). This requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556) (internal quotation marks and citation omitted).

Dismissal of a complaint for failure to state a claim can be based on either the "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint that provides "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor will a complaint suffice if it presents nothing more than "naked assertions" without "further factual enhancement." *Id.* at 557. In reviewing a motion to dismiss, courts will "accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). But courts are not required "to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

2. Elements of a Valid Contract

Defendant argues the Arbitration Agreement constitutes a valid contract that bars

Plaintiff's defamation claim. "The enforceability of Arbitration Agreement is governed by the [FAA], which provides that such an agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *Shelby v. Brookdale Senior Living, Inc.*, 2022 WL 1657245 (9th Cir. May 25, 2022) (quoting 9 U.S.C. § 2). Arizona state law applies to determine these identified issues. *Dr.'s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996).

Plaintiff argues the Arbitration Agreement is invalid because she signed it electronically. But "a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form[.]" 15 U.S.C. § 7001(a)(1). Defendant represents that Plaintiff accepted the Agreement as a condition to Defendant's offer of employment and both parties mutually agreed to arbitrate disputes. (Doc. 11 at 4). The Court agrees with Defendant and finds the Agreement constitutes a valid contract between the parties. *See Muchesko v. Muchesko*, 955 P.2d 21, 24 (Ariz. Ct. App. 1997) (explaining under Arizona law, "the essential elements of a valid contract are an offer, acceptance, consideration, a sufficiently specific statement of the parties' obligations, and mutual assent").

3. Defenses of Procedural Unconscionability, Fraud, and Duress

Plaintiff next argues the Arbitration Agreement is unenforceable because it is "one-sided" and "crafted by Defendant solely." (Doc. 16 at 10). The Court construes Plaintiff's reasoning as an argument for procedural unconscionability because the Agreement is a contract of adhesion.[6] The Arizona Supreme Court has recognized two types of contractual unconscionabilities: procedural and substantive. *Nickerson v. Green Valley Rec., Inc.*, 265 P.3d 1108, 1117 (Ariz. Ct. App. 2011). Whether a contract is unconscionable is a question of law. *See Clark v. Renaissance W., LLC*, 307 P.3d 77, 79 (Ariz. Ct. App. 2013). The Ninth Circuit acknowledged that, "under Arizona law[,] plaintiffs 'have a high bar to meet

[6] A contract of adhesion is "typically a standardized form offered . . . [on] a take it or leave it basis without affording [] a realistic opportunity to bargain and under such conditions that the consumer cannot obtain the desired product or services except by acquiescing in the form contract." *Wernett v. Serv. Phoenix, LLC*, No. CIV09-168-TUC-CKJ, 2009 WL 1955612 (D. Ariz. July 6, 2009) (quoting *Broemmer*, 840 P.2d at 1015 (internal quotations omitted)).

in demonstrating that an arbitration agreement is unconscionable.'" *Shelby*, 2022 WL 1657245, at *3 (quoting *also Longnecker v. Am. Express Co.*, 23 F. Supp. 3d 1099, 1108 (D. Ariz. 2014)).

Adhesive contracts are not *per se* unconscionable under Arizona law. *Broemmer v. Abortion Servs. of Phoenix, Ltd.*, 840 P.2d 1013, 1016 (Ariz. 1992). "A contract of adhesion is only unenforceable if it does not fall within the reasonable expectations of the weaker party and if the contract is unconscionable." *Longnecker*, 23 F. Supp. 3d at 1109 (internal citations omitted). Procedural unconscionability "is concerned with 'unfair surprise,' fine print clauses, mistakes or ignorance of important facts or other things that mean bargaining did not proceed as it should." *Nickerson*, 265 P.3d at 1118 (quoting *Maxwell v. Fidelity Fin. Servs.*, 907 P.2d 51, 51–8 (Ariz. 1995).

Plaintiff claims the Agreement is unconscionable because prior to her employment, "Defendant did not offer any option but forced her to electronically sign the contract, or ultimately, Defendant will not offer her the job." (Doc. 16 at 10). She further argues the Agreement was "enforced to Plaintiff without her complete understanding."

These reasons do not "meet the high bar of procedural unconscionability, which 'bears a strong resemblance to its common-law cousins of fraud and duress.'" *Shelby*, 2022 WL 1657245, at *3 (quoting *Maxwell*, 907 P.2d at 58)). Plaintiff does not explain how she was was "forced" to sign the contract. In signing the agreement, Plaintiff affirmed that both her and Defendant "understand and agree that . . . [the parties] give up their respective rights to a court or jury trial" and "agree[] to arbitrate claims covered" by the Agreement. (Doc. 11-1 at 36). Plaintiff has failed to "establish a colorable claim that [Defendant's] policy of arbitration for employment-related disputes constitutes unfair surprise, is oppressive, or that [Defendant] attempted to hide its arbitration policy from Plaintiffs." *Coup v. Scottsdale Plaza Resort, Ltd. Liab. Co.*, 823 F. Supp. 2d 931, 949 (D. Ariz. 2011) (denying plaintiff's claim for procedural unconscionability). Construing the facts in the light most favorable to Plaintiff, as it must under Rule 12(b)(6), the Court finds that Plaintiff's procedural unconscionability defense fails.

Plaintiff also claims that "Defendant deceptively induced Plaintiff with duress" and "acted fraudulently" in executing the Agreement. These allegations, without more, are conclusory and insufficient to support such a finding. Plaintiff pleads facts that are merely consistent with a showing of Defendant's liability, which "stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678. Although Plaintiff states she would not have been offered the job if she refused to sign the Agreement, that is the typical function of a condition to employment. Plaintiff was free to find employment elsewhere. As discussed, Plaintiff provides no evidence that Defendant "forced" her to sign the Agreement by means of fraud or duress. Thus, Plaintiff's Statute of Frauds defense fails as "labels and conclusions" of fraud and duress supported by "naked assertions" without "further factual enhancement[,]" and will not do. *Twombly*, 550 U.S. at 555, 57.

In sum, Plaintiff does not allege sufficient facts under the contact defense theories for procedural unconscionability, fraud, or duress that would render the Arbitration Agreement void. *See Balistreri*, 901 F.2d at 699.

4. Scope of the Arbitration Agreement

Having found the Arbitration Agreement is valid and enforceable, the Court must now consider whether Plaintiff's defamation claim falls within its scope. Claims that are covered by the Agreement include all claims "which arise out of or relate to employee's employment, application and selection for employment and/or termination of employment[,]" "claims incidental to the employment relationship but arising after that relationship ends (for example . . . claims arising out of or related to post-termination defamation[,]" and "claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance[.]'" (Doc. 11-1 at 31). Based on this language, the Court finds Plaintiff's defamation claim is subject to the Agreement because it directly relates to her termination of employment with Defendant. (Doc. 11 at 4).

Accordingly, the Court cannot consider the merits of Plaintiff's defamation claim because it is barred by the Arbitration Agreement. *Leal*, 2007 WL 1576001, at *2–3. The

Court will therefore dismiss Plaintiff's Amended Complaint with prejudice.

C. Petition to Confirm Award, Motion for Trial, and Motion to Vacate Award – Validity of the Arbitration Award

Although Plaintiff's defamation claim is barred, the parties also contest the validity of the March 23, 2022, Award resulting from the Previous Arbitration. On July 6, 2022, Defendant timely petitioned this Court to confirm the Arbitration Award and dismiss Plaintiff's Amended Complaint with prejudice pursuant to 9 U.S.C. § 9.[7] On July 11, 2022, and July 15, 2022, respectively, Plaintiff filed her Motion for Trial De Novo and Motion to Vacate the Arbitration Award pursuant to 9 U.S.C. § 10. The FAA provides this Court jurisdiction to review arbitration awards. 9 U.S.C. §§ 9–12. Therefore, the Court will proceed to consider these motions to determine the merits of the Arbitration Award.

1. Statute of Limitations

At the outset, Defendant argues Plaintiff's efforts to vacate the Award are untimely because the 9 U.S.C. § 9 required her to file a motion by June 23, 2022, and she did not do so until July 2022. (Docs. 18 at 2; 20 at 2). The FAA indeed requires "[n]otice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. However, the Ninth Circuit has ruled that the FAA is subject to the doctrine of equitable tolling. *Move, Inc. v. Citigroup Glob. Mkts.*, 840 F.3d 1152, 1157–58 (9th Cir. 2016). "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way." *Redlin v. United States*, 921 F.3d 1133 (9th Cir. 2019) (quoting *Credit Suisse Sec. (USA) LLC v. Simmonds*, 566 U.S. 221, 227 (2012)).

Plaintiff contends her efforts are timely because she intended to challenge the Arbitration Award upon filing her initial Complaint (Doc. 1) on April 1, 2022. (Doc. 23 at

[7] Section 9 of the FAA provides that "any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected[.]" 9 U.S.C. § 9.

4). The Court also recognizes that in her June 1, 2022, FAC, Plaintiff stated sufficient allegations under the FAA standard for vacatur that put Defendant on notice of her intentions to challenge the Arbitration Award. (*Compare* Doc. 8 at 16, ¶ 33) ("Plaintiff deems the Arbitrator's dismissal as being arbitrary, corrupt, biased, prejudicial, and a clear gross miscarriage of justice.") *with* 9 U.S.C. § 10 (a district court may vacate an award "where the award was procured by corruption[;] . . . where there was evident partiality or corruption in the arbitrators[;] . . . where the arbitrators were guilty . . . of any misbehavior by which the rights of any party have been prejudiced; or where the arbitrators exceeded their powers"). Given that both of these filings are well within the FAA's June 23, 2022, deadline, the Court finds that Plaintiff has been pursuing her rights diligently. Moreover, allowing Plaintiff to proceed with her Motions for Trial De Novo and to Vacate Award would not prejudice Defendant. *Accord Move, Inc.*, 840 F.3d at 1158 (tolling plaintiff's claim under the FAA even though the parties did not address the substantive requirements of equitable tolling because plaintiff "acted with due diligence in pursuing its claim" and "tolling would not prejudice [the defendant] under the circumstances").

Thus, the Court concludes that Plaintiff is entitled to equitable tolling under the FAA and will consider the merits of her July 11, 2022, Motion for Trial De Novo and July 15, 2022, Motion to Vacate the Arbitration Award.

2. Merits of the Arbitration Award

Plaintiff argues the Arbitration Award should be vacated pursuant to 9 U.S.C. § 10 because (1) the Award was procured by corruption and partiality; (2) the Award was procured by fraud; (3) the Arbitrator exhibited partiality; and (4) the Arbitrator exceeded his powers. (Docs. 15 at 2–3; 17 at 4).[8] Defendant contends Plaintiff has failed to meet her heavy burden under 9 U.S.C. § 10(a)(1)–(4). The Court will discuss each of Plaintiff's arguments in turn.

[8] Plaintiff raises similar arguments for vacatur in her Response to Defendant's Motion to Dismiss. (Doc. 16 at 11–17). There, Plaintiff cites to non-binding authorities from the Fourth, Eighth, and Eleventh Circuits. Plaintiff fails to cite any Ninth Circuit authorities. Thus, for the purpose of this Order, the Court will primarily focus on Plaintiff's arguments for vacatur made in her Motion for Trial De Novo and Motion to Vacate Award (Docs. 15 at 2–3; 17 at 4) in accordance with Ninth Circuit case law.

i. Standards for Review of Arbitration Awards

Under the FAA, a party to an arbitration may apply to a federal district court for an order confirming the arbitration award. 9 U.S.C. § 9. A court "must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of [the FAA]." *Id.*; *See Stafford v. Baart Behavioral Health Servs.*, 855 F. App'x 426, 427 (9th Cir. 2021) (granting an arbitration award because there were no grounds for vacatur).

The FAA authorizes a district court to vacate an arbitration award in the following limited circumstances: "[1] where the award was procured by corruption, fraud, or undue means; [2] where there was evidence of partiality or corruption in the arbitrators; [3] where the arbitrators were guilty of misconduct or misbehavior; or [4] where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." *Stafford*, 855 F. App'x at 427 (citing 9 U.S.C. § 10(a)(1)–(4)) (internal quotations omitted). "The burden of establishing grounds for vacating an arbitration award is on the party seeking it." *U.S. Life Ins. Co. v. Superior Nat. Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir. 2010). "Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award." *Bosack v. Soward*, 586 F.3d 1096, 1102 (9th Cir. 2009).

A district court's review of an arbitration award is "both limited and highly deferential." *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009); *Kyocera Corp. v. Prudential–Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003) (en banc) ("The Federal Arbitration Act, 9 U.S.C. §§ 1–16, enumerates limited grounds on which a federal court may vacate, modify, or correct an arbitral award."). Nonetheless, the Ninth Circuit has held that "[a]lthough an arbitrator has great freedom in determining an award, he may not dispense his own brand of industrial justice." *Garvey v. Roberts*, 203 F.3d 580, 588–89 (9th Cir. 2000) (quoting *Pac. Motor Trucking Co. v. Auto. Machinists Union*, 702 F.2d 176, 177 (9th Cir. 1983)).

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ii. Whether an Award is Procured by Corruption and Partiality

Plaintiff first argues the Award is biased and should be vacated under 9 U.S.C. § 10(a)(1) because Defendant paid the Arbitrator for his services. (Doc. 15 at 2). Plaintiff makes this assertion without providing any supporting authorities. To the contrary, this compensation arrangement is in accordance with AAA policies that are referenced in the Arbitration Agreement. (Doc. 11-1 at 32–33). For example, the AAA's policy for costs of employment arbitrations provides, "[t]he employer or company pays the arbitrator's compensation unless the employee or individual, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation." American Arbitration Association, *Employment Arbitration under AAA Administration - Costs*, www.adr.org/employment (last visited Jan. 18, 2006).

Moreover, Plaintiff misconstrues how the Arbitrator was compensated. While the Defendant provided the funds for the Arbitrator's compensation, the AAA Rules state that "any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator. Payment of the arbitrator's fees and expenses shall be made by the AAA from the fees and moneys collected by the AAA for this purpose." American Arbitration Association, *Employment Arbitration Rules and Mediation Procedures*, 25 https://www.adr.org/sites/default/files/EmploymentRules-Web.pdf (last visited Jan. 18, 2006). Plaintiff concedes the Previous Arbitration followed these policies as she provided an email exhibit detailing how the AAA, rather than Defendant, arranged compensation for the Arbitrator. (Doc. 15 at 7).

Plaintiff was certainly on notice of these policies and procedures as both are located on the webpage that is directly referenced in the Arbitration Agreement. (Doc. 11-1 at 32–33) (citing the AAA Rules and www.adr.org/employment). Furthermore, the presumable purpose of these policies is to uphold the neutrality and integrity of the arbitration proceedings carried out by the AAA. American Arbitration Association, *Employment Arbitration under AAA Administration*, www.adr.org/employment (last visited Jan. 18,

2006) ("The AAA's policy on employment [alternative dispute resolution] is guided by the state of existing law, as well as its obligation to act in an impartial manner. In following the law, and in the interest of providing an appropriate forum for the resolution of workplace disputes, the Association administers employer plans which meet the due process standards as outlined in its Employment Arbitration Rules and Mediation Procedures and the Due Process Protocol."). The Court therefore rejects Plaintiff argument that the Award was procured by corruption and partiality because of the Arbitrator's means of compensation.

iii. Whether an Award is Procured by Fraud

Plaintiff also argues the Previous Arbitration was based on fraud under 9 U.S.C. § 10(a)(1) because she was not properly informed of the nature and procedures of arbitration. "[I]n order to protect the finality of arbitration decisions, courts must be slow to vacate an arbitral award on the ground of fraud." *Dogherra v. Safeway Stores*, 679 F.2d 1293, 1297 (9th Cir. 1982). To vacate an arbitral award, a plaintiff must meet the same requirements at common law and "show that the fraud was (1) not discoverable upon the exercise of due diligence prior to the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear and convincing evidence." *Lafarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986). However, the FAA modifies the common law test by requiring "a greater level of improper conduct[.]"*Pac. & Arctic Ry. & Navigation Co.*, 952 F.2d at 1148.

Here, Plaintiff alleges she was "deceived" by Defendant's HR Senior Case Manager after being informed "the arbitration is an informal process and her knowledge of any Federal or State laws are unnecessary and unimportant." (Doc. 15 at 2). Plaintiff further claims she was "deceived" by the Arbitrator after he informed her that she is "not legal" and "can amend her complaint in an informal writing." (*Id.* at 2–3).

Plaintiff has not provided sufficient evidence to establish fraud by clear and convincing evidence. First, as pointed out by Defendant, the attached exhibit to prove the HR Senior Case Manager's allegedly fraudulent statement does not actually refer to the

statement. (*Id.* at 9–10). Second, Plaintiff does not provide any form of evidence to substantiate the allegedly fraudulent statement made by the Arbitrator. And even if Plaintiff was allegedly prejudiced by the Arbitrator's statement as to her initial amendment, she also filed an Amended Demand and Complaint that the Arbitrator considered. These circumstances are far from sufficient to exhibit the "extremely high degree of improper conduct" required to establish fraud under the FAA. *Pac. & Arctic Ry. & Navigation Co.*, 952 F.2d at 1148.

iii. Whether an Arbitrator Exhibits Partiality

Plaintiff next alleges the Arbitrator exhibited partiality under 9 U.S.C. § 10(a)(2) when he "refused to follow the Management Scheduling Order, ignored her exhibits, and utterly disregarded all the applicable laws" cited by Plaintiff. (Doc. 15 at 2–3). Plaintiff further argues the Arbitrator "simply parroted" the Defendant's arguments and reasoning when issuing the Award. (Doc. 23 at 8).

"To show 'evident partiality' in an arbitrator, [Plaintiff] either must establish specific facts indicating actual bias toward or against a party or show that [the Arbitrator] failed to disclose to the parties information that creates '[a] reasonable impression of bias.'" *A. Miner Contracting, Inc. v. Dana Kepner Co.*, 696 F. App'x 234, 235 (9th Cir. 2017) (quoting *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 646 (9th Cir. 2010)). Plaintiff does not discuss either of these elements. Plaintiff's reasons are mere opinions and do not meet the requisite level of specificity to establish either actual bias or reasonable bias under *Lagstein*.

iv. Whether an Arbitrator Exceeds their Power

Last, Plaintiff argues the Court should vacate the award because the Arbitrator exceeded his powers under 9 U.S.C. § 10(a)(3). (Doc. 23 at 9). Arbitrators "exceed their powers" when the award is "completely irrational" or in "manifest disregard of the law." *Comedy Club*, 553 F.3d at 1288; *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 665 (9th Cir. 2012). Manifest disregard of the law means that "the arbitrators recognized the applicable law and then ignored it." *Luong v. Circuit City Stores, Inc.*, 368 F.3d 1109, 1112 (9th Cir.

2004). "These grounds afford an extremely limited review authority, a limitation that is designed to preserve due process but not to permit unnecessary public intrusion into private arbitration procedures." *Kyocera Corp.*, 341 F.3d at 997.

Plaintiff contends the Arbitrator disregarded the Federal Rules of Evidence because he refused all of her submitted exhibits but accepted the Defendant's even though "[D]efendant did not provide anything to prove its assertions." (Doc. 23 at 9). She further claims the Arbitrator misconstrued pertinent evidence when making the "untruthful" finding that no third party heard "Defendant's defamatory falsehood." (*Id.* at 8–9). Last, Plaintiff argues the Arbitrator refused to liberally construe her pleadings as a *pro se* plaintiff. (Doc. 17 at 4).

Plaintiff does not cite to any specific statutes, rules, or regulations that the Arbitrator supposedly disregarded, nor does she cite to any of the Arbitrator's findings of fact and conclusions of law to prove so. Plaintiff's blanket assertions that the Arbitrator did not apply the Federal Rule of Evidence or properly construe her claims liberally are insufficient to meet the extremely high burden to prove an arbitrator disregarded the law. *See Bosack*, 586 F.3d at 1104 ("Arbitrators are not required to set forth their reasoning supporting an award. An arbitrators' 'award may be made without explanation of their reasons and without a complete record of their proceedings.' 'If they choose not to do so, it is all but impossible to determine whether they acted with manifest disregard for the law.'") (citations omitted). Even if the Arbitrator failed to make an explicit finding, as Plaintiff argues, "this does not warrant vacatur." *Id.*

In sum, Plaintiff has not identified a limited circumstance under the FAA that authorizes the Court to vacate the Award. *See* 9 U.S.C. § 10(a)(1)–(4). Therefore, the Court must grant Defendant's Petition for Confirmation of Arbitration Award under 9 U.S.C. § 9. *See Stafford*, 855 F. App'x at 427.

IV. Conclusion

First, the Court denies Plaintiff's Motion for Leave because her proposed sur-reply to Defendant's Motion to Dismiss is unnecessary, and she has had ample opportunities to

set forth her intended arguments in her Motion for Trial De Novo and Motion to Vacate Award. Second, the Court grants Defendant's Motion to Dismiss because the Arbitration Agreement is valid and enforceable, thereby barring Plaintiff's defamation claim. Third, the Court denies Plaintiff's Motion for Trial De Novo and Motion to Vacate Award because Plaintiff has not shown any of the circumstances under 9 U.S.C. § 9 to warrant vacatur. Thus, the Court grants Defendant's Petition for Confirmation of Arbitration Award.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss and Petition for Confirmation of Arbitration Award (Doc. 11) is **GRANTED.** Plaintiff's Amended Complaint (Doc. 8) is **DISMISSED** with prejudice. The Clerk of the Court is kindly directed to terminate this action.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File Her Sur-reply (Doc. 25) is **DENIED.**

IT IS FURTHER ORDERED that Plaintiff's Motion for Trial de Novo (Doc. 15) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Vacate Arbitration Award (Doc. 17) is **DENIED**.

Dated this 23rd day of January, 2023.

Honorable Diane J. Humetewa
United States District Judge

Rule 13. Review on Certiorari: Time for Petitioning

Primary tabs

- 1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.
- 2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, *e. g.*, 28 U. S. C. §2101(c).
- 3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.
- 4. A cross petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross petition (which except for Rule 12.5 would be untimely) will not be granted unless another party's timely petition for a writ of certiorari is granted.
- 5. For good cause, a Justice may extend the time to file a petition for awrit of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific

reasons why an extension of time is justified. The application must be filed with the Clerk at least 10 days before the date the petition is due,except in extraordinary circumstances. The application must clearly identify each party for whom an extension is being sought, as any extension that might be granted would apply solely to the party or parties named in

the application. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

9 USC § 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

9 U.S. Code § 9 - Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 USC §10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
(1) where the award was procured by corruption, fraud, or undue means;
(2) where there was evident partiality or corruption in the arbitrators, or either of them;
(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.
(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

9 U.S. Code § 11 - Same; modification or correction; grounds; order. Same; vacation; grounds; rehearing

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a)

Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b)

Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c)

Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

28 U.S. Code § 1254 - Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1)

By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2)

By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

AZ Rev Stat § 12-1517 (2020)

12-1517. Limited effect of article
This article shall have no application to arbitration agreements between employers and employees or their respective representatives.

ARS § 12-3023. Vacating award

A. On motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if any of the following applies:

1. The award was procured by corruption, fraud or other undue means.

2. There was either:
(a) Evident partiality by an arbitrator appointed as a neutral arbitrator.
(b) Corruption by an arbitrator.
(c) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.

3. An arbitrator refused to postpone the hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to section 12-3015, so as to prejudice substantially the rights of a party to the arbitration proceeding.

4. An arbitrator exceeded the arbitrator's powers.

5. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 12-3015, subsection C not later than the beginning of the arbitration hearing.
6. The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 12-3009 so as to prejudice substantially the rights of a party to the arbitration proceeding.

B. A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 12-3019 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 12-3020, unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the court vacates an award on a ground other than that set forth in subsection A, paragraph 5 of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection A, paragraph 1 or 2 of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection A, paragraph 3, 4 or 6 of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section 12-3019, subsection B for an award.

D. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Article I, Section 10, Clause 1:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Restatement Second of Contracts § 211

Standardized Agreements

1. xcept as stated in Subsection (3), where a party to an agreement signs or otherwise manifests assent to a writing and has reason to believe that like writings are regularly used to embody terms of agreements of the same type, he adopts the writing as an integrated agreement with respect to the terms included in the writing.
2. Such a writing is interpreted wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing.

Where the other party has reason to believe that the party manifesting such assent would not do so if he knew that the writing contained a particular term, the term is not part of the agreement

Amendment VI

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

Amendment XIV

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.
Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.
No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.
The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.
The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CERTIFICATE OF SERVICE

I, Myrna de Jesus, do hereby certify that I have this day mailed by U.S. mail a true and correct copy of the above foregoing Notice of Service to the Respondent UnitedHealth Group Inc.'s attorneys Kirsty L. Peters and Amanda M. Browder at the following address: LITTLER MENDELSON, PC., 2425 EAST CAMELBACK ROAD, SUITE 900; PHOENIX, ARIZONA 85016.

This _24__ day of January 2025.

Respectfully submitted,

Myrna de Jesus
Representing by *pro se*