Jan-17-2017 9:30am	Notice Of Motion And Motion To Compel Arbitration And For An Order Staying Proceedings TENTATIVE RULING: Matter on calendar for Tuesday, January 17, 2017, Line 9, DEFENDANT CISCO SYSTEMS, INC. Motion To Compel Arbitration And For An Order Staying Proceedings. Defendant Cisco Systems, Inc.'s motion to compel arbitration and stay of proceedings is denied. Plaintiff Ann Bark has shown that the arbitration agreement is unconscionable and severance is not appropriate. The arbitration agreement is procedurally unconscionable in two significant ways. First, the arbitration agreement was a non-negotiable contract of adhesion, which Cisco acknowledges at page 8 of its initial memorandum. Second, there is a strong aspect of surprise by the inclusion of an arbitration agreement providing for arbitrability of a broad array of employment disputes in an agreement that appears by its title and the great majority of its contents to be concerned solely with intellectual property issues, which Ms. Bark viewed as of little consequence to her job. "'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." (Stirlen v. Supercuts, Inc. (1997) 51 Cal.App.4th 1519, 1532.) While the arbitration agreement is clear and legible and Ms. Bark was obligated to read the agreement before signing it, there is surprise because the title of the agreement ("PROPRIETARY INFORMATION AND INVENTION AGREEMENT") and the uniform typeface and font did not draw attention to the arbitration agreement. While Cisco's failure to attach the applicable AAA arbitration rules may not by itself be procedurally unconscionable, had Cisco attached them, the arbitration agreement would have been much less of a surprise. The arbitration agreement is also substantive unconscionable in two significant ways. First, the fee-splitting arrangement is contrary to Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83, 110-111. Second, the "carve out" portion of the agreement that excludes trade secret and intellectual property claims from arbitration disproportionately favors the employer defendant. (Fitz v. NCR Corp. (2004) 118 Cal.App.4th 702, 725; Martinez v. Master Protection Corp. (2004) 118 Cal.App.4th 107, 115.) Due to the high degree of procedural and substantive unconscionability and its permeation of the entire arbitration agreement, severance of the unconscionable provisions is not appropriate. (Accord Armendariz, 24 Cal.4th at p. 124 (more than one unlawful provision in an arbitration agreement weighs against severance)). Any party who contests a tentative ruling must send an email to contestdept302tr@sftc.org with a copy to all other parties by 4pm stating, without argument, the portion(s) of the tentative ruling that the party contests. The subject line of the email shall include the line number, case name and case number. Counsel for Ms. Bark is required to prepare a proposed order which repeats verbatim the substantive portion of the tentative ruling and must bring it to the hearing or email it to contestdept302tr@sftc.org prior to the hearing even if the tentative ruling is not contested. =(302/HK)