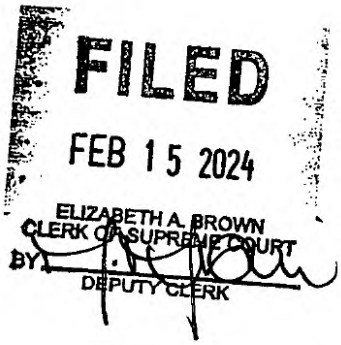
IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL LLOYD WHITE,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; AND THE HONORABLE KATHLEEN A. SIGURDSON, DISTRICT JUDGE,
Respondents,
and
JEREMY EATON; AND TESLA, INC.,
Real Parties in Interest.

No. 87364



ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges an order compelling arbitration. Real party in interest Tesla, Inc., moved to compel arbitration under petitioner Darryl White's employment contract after White sued Tesla. After granting White three extensions of time to respond, the district court granted Tesla's motion, and later denied White's motion for reconsideration.

"[A] writ of mandamus is the proper method to challenge an order compelling arbitration." *Kindred v. Second Judicial Dist. Court,* 116 Nev. 405, 409, 996 P.2d 903, 906 (2000). We thus consider White's petition on the merits, reviewing the validity and scope of the arbitration clause de novo and the factual findings underlying the district court's decision for clear error. *Gonski v. Second Judicial Dist. Court*, 126 Nev. 551, 557, 245 P.3d 1164, 1168 (2010), *overruled on other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 415 P.3d 32 (2018).

24-05752

The Federal Arbitration Act (FAA) provides that an arbitration agreement is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (2022). Unconscionability is one of those grounds, but "both procedural and substantive unconscionability must be present in order for a court to exercise its discretion to refuse to enforce a contract or [arbitration] clause as unconscionable." *Burch v. Second Judicial Dist. Court*, 118 Nev. 438, 443, 49 P.3d 647, 650 (2002). "A clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract." *D.R. Horton, Inc. v. Green,* 120 Nev. 549, 554, 96 P.3d 1159, 1162 (2004), *overruled on other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 190-91, 415 P.3d 32, 41 (2018). Procedural unconscionability also considers "the manner in which the contract or the disputed clause was presented and negotiated," *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1282 (9th Cir. 2006), as well as whether the drafting party misrepresented the nature or effect of the contract, *see Gonski,* 126 Nev. at 559, 245 P.3d at 1170.

We agree with the district court that White failed to demonstrate procedural unconscionability. *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1157 (9th Cir. 2013) ("As arbitration is favored, those parties challenging the enforceability of an arbitration agreement bear the burden of proving that the provision is unenforceable."). Although White argues that a Tesla representative misled him by pointing out certain portions of the documents but not the arbitration provision, he concedes that he read the provision. And White cannot avoid arbitration by

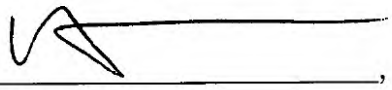
claiming he did not fully understand the implications of signing the arbitration agreement. *Shivkov v. Artex Risk Sols., Inc.*, 974 F.3d 1051, 1059-60 (9th Cir. 2020) (explaining that there is no requirement that "a contracting party . . . point out and fully explain an arbitration clause"). Additionally, although White claims that the provision lacked conspicuousness, the provision was highlighted with bold italicized letters. And while White complains that he did not know he was waiving his right to a jury trial by agreeing to the arbitration provision, that claim alone does not render the arbitration provision procedurally unconscionable. The waiver of a jury trial is the defining characteristic of arbitration provisions, and the FAA "displaces any rule that covertly [discriminates against arbitration] by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 251 (2017); *AT&T Mobility*, 563 U.S. at 342 (holding that a law would violate the FAA if it deemed unconscionable arbitration agreements "that disallow an ultimate disposition by a jury" because it would improperly rely on the unique characteristics of arbitration agreements); *Ballesteros Tr.*, 134 Nev. at 189-90, 415 P.3d at 40 (holding that "the FAA preempts laws that invalidate an arbitration agreement as unconscionable for" various reasons, including "not affording a right to jury trial").

As to White's argument that the offer letter constituted an adhesion contract, we have declined to apply the adhesion contract doctrine to employment contracts because such contracts can generally be negotiated, *see Kindred*, 116 Nev. at 411, 996 P.2d at 907 (explaining that we have "n[ot] applied the adhesion contract doctrine to employment cases"), and White did not claim that Tesla told him that the terms of the

offer letter were nonnegotiable. To the extent White urges that he had no choice but to sign the arbitration agreement because he was not presented with it until the end of the 90-day conversion process, after he had already quit his other jobs, we disagree. White concedes that he quit his jobs immediately after the initial orientation, before he had signed any of the employment documents, and he fails to demonstrate that he decided to quit his jobs based on any official employment representations by Tesla.[1]

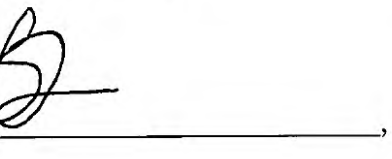
Because White failed to establish procedural unconscionability, we need not address whether the arbitration provision was substantively unconscionable. Based on the foregoing, we

ORDER the petition DENIED.



_____, J.
Herndon

_____, J.
Lee



_____, J.
Bell

cc: Hon. Kathleen A. Sigurdson, District Judge
Darryl Lloyd White
Jackson Lewis P.C.
Washoe District Court Clerk

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[1]White points to an unpublished California case in arguing that the agreement here was unconscionable, but that case is distinguishable in terms of the sequence of events and thus does not support his claim.