

FILED

OCT 17 2017

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACQUELINE MCFADDIN, individually  
and on behalf of all others similarly  
situated,

Plaintiff-Appellee,

v.

E.A. RENFROE & COMPANY, INC., a  
Georgia corporation,

Defendant-Appellant.

No. 15-55886

D.C. No.  
5:14-cv-02369-VAP-SP

MEMORANDUM\*

JACQUELINE MCFADDIN,

Plaintiff-Appellee,

v.

E.A. RENFROE & COMPANY, INC., a  
Georgia corporation,

Defendant-Appellant.

No. 15-56404

D.C. No.  
5:15-cv-01044-VAP-SP

Appeal from the United States District Court  
for the Central District of California

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

Virginia A. Phillips, Chief Judge, Presiding

Argued and Submitted August 8, 2017  
Pasadena, California

Before: REINHARDT, KOZINSKI, and CHRISTEN, Circuit Judges.

California law governs the determination of whether the parties' arbitration agreement is unconscionable. Under California law, "the strong preference is to sever *unless* the agreement is permeated by unconscionability." *Ajamian v. CantorCO2e, L.P.*, 203 Cal. App. 4th 771, 802 (2012) (internal quotation marks omitted); see *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1272 (9th Cir. 2017). We agree with the district court that the choice of forum provision, the prevailing party provision, and the cost provision are unconscionable. Renfroe stipulated it would not enforce the choice of forum provision, and the prevailing party and cost provisions are severable. See *Fittante v. Palm Springs Motors, Inc.*, 105 Cal. App. 4th 708, 727 (2003). Hence, we vacate its ruling that the entirety of the arbitration agreement is unenforceable.

The district court did not address whether the arbitration agreement's waiver of class action claims is enforceable and applies to McFaddin's California's Private Attorneys General Act claim. The district court shall address this issue before reconsidering whether the agreement remains enforceable.

Appellant's motion for judicial notice (dkt. 55) is denied.

**VACATED and REMANDED.**