

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico  
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2 **MARY LOUISE HICKS,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

**No. A-1-CA-42123**

5 **STARBUCKS CORPORATION d/b/a**

6 **STARBUCKS COFFEE COMPANY,**

7 **JENNIFER HAFFENDEN-MUÑOZ**

8 **and VANESSA DUBRAY,**

9 Defendants-Appellees.

10 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

11 **Erin B. O'Connell, District Court Judge**

12 Ferrance Law, P.C.

13 David A. Ferrance

14 Albuquerque, NM

15 Orlando C. Martinez Law

16 Orlando C. Martinez

17 Albuquerque, NM

18 for Appellant

19 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

20 Michael H. Bell

21 Denver, CO

22 for Appellees

1 **MEMORANDUM OPINION**

2 **HANISEE, Judge.**

3 {1} Plaintiff Mary Louise Hicks appeals from the district court’s dismissal of her  
4 complaint and its order granting Defendants Starbucks Corporation d/b/a Starbucks  
5 Coffee Company, Jennifer Haffenden-Muñoz, and Vanessa Dubray’s motion to  
6 compel arbitration. Plaintiff asserts on appeal that the district court erred in  
7 compelling arbitration based on an agreement that she argues lacked mutual assent  
8 because it was formed by procedurally unconscionable means. In dismissing and  
9 compelling arbitration, the district court held that Plaintiff’s procedural  
10 unconscionability argument was not specifically directed at the delegation clause—  
11 that clause of a given arbitration agreement assigning gateway questions of  
12 arbitrability to an arbitrator—but rather only to the arbitration agreement “as a  
13 whole.” Since the district court’s order, however, our New Mexico Supreme Court  
14 has clarified the law in this area. *See Sanchez v. United Debt Couns., LLC*, 2024-  
15 NMSC-026, ¶ 1, 562 P.3d 564. *Sanchez* held that “a delegation clause and the  
16 arbitration agreement—or contract as a whole—may be unenforceable for the same  
17 reason,” *id.* ¶ 15 (emphasis omitted), but retained the requirement that a challenge  
18 must be “specific to the delegation clause,” *id.* ¶ 21 (emphasis added). We perceive  
19 Plaintiff to have asserted such a challenge in this case. Therefore, we reverse and  
20 remand.

1 **BACKGROUND**

2 {2} Plaintiff began working for Defendants in 2012 as a store manager. In 2014,  
3 as a new condition to active employment, Defendants began requiring that all new  
4 employees, and existing employees that were promoted to a new position or applied  
5 to a different position within the company, agree to arbitrate any claims arising from  
6 their employment. In 2015, Plaintiff was promoted to district manager and was then  
7 required to sign the agreement to arbitrate that had recently been implemented by  
8 Defendants. In 2019, Plaintiff was relocated from Colorado to New Mexico, and as  
9 part of this relocation was again required to sign the agreement to arbitrate—which  
10 was identical to the one she had signed four years prior.

11 {3} In 2023, Plaintiff filed a complaint against Defendants alleging claims of  
12 discrimination on the basis of a medical condition as well as unlawful termination  
13 due in part to her raising concerns over race and gender discrimination in the  
14 workplace, all in violation of the New Mexico Human Rights Act (NMHRA),  
15 NMSA 1978, §§ 28-1-1 to -15 (1969, as amended through 2024). Defendants filed  
16 a motion to dismiss Plaintiff’s complaint and to compel arbitration. Plaintiff  
17 responded and Defendants replied, after which the district court issued an opinion  
18 and order granting Defendants’ motion. Relying heavily on this Court’s decision in  
19 *Felts v. CLK Management, Inc.*, 2011-NMCA-062, 149 N.M. 681, 254 P.3d 124,  
20 and citing specifically *Felts*’ expression that Plaintiff must have “raised a distinct

1 challenge to the delegation clause that was severable from her challenges to the  
2 validity of the entire” agreement, *see id.* ¶ 29, the district court agreed with  
3 Defendants “[b]ecause Plaintiff’s arguments are directed at the arbitration agreement  
4 as a whole rather than presenting a specific challenge to the delegation provision.”  
5 Plaintiff filed a motion to reconsider, stating that the absence of “mutual assent to  
6 *any* of the clauses . . . is also an argument that the delegation clause is not ‘clear and  
7 unmistakable evidence’ of the parties’ intent to delegate arbitrability to an  
8 arbitrator—it was essentially coerced.” The district court denied Plaintiff’s motion  
9 to reconsider and filed a second explanatory opinion and order. In that order, citing  
10 this Court’s decision in *Juarez v. THI of New Mexico at Sunset Villa, LLC*, 2022-  
11 NMCA-056, ¶ 7, 517 P.3d 918, the district court concluded that the challenge in  
12 *Juarez* too went to contract formation—specifically “the circumstances of signing  
13 the agreement”—and that “Plaintiff’s arguments that the agreement was  
14 procedurally unconscionable as a contract of adhesion is a defense to enforcement,  
15 not a challenge to contract formation.” This appeal followed.

## 16 **DISCUSSION**

17 {4} “We review a district court’s grant or denial of a motion to compel arbitration  
18 *de novo.*” *Atlas Elec. Constr. Inc. v. Flintco, LLC*, 2024-NMCA-046, ¶ 4, 550 P.3d  
19 881. On appeal, Plaintiff urges this Court to reverse the ruling of the district court  
20 because *Sanchez* clarified the precedent that the district court relied on to reject

1 Plaintiff’s challenge, and applying *Sanchez* reveals Plaintiff’s claim of procedural  
2 due process sufficiently specific to the delegation clause.<sup>1</sup> We agree and explain.

3 **I. Specific Challenge to the Delegation Clause**

4 {5} It is well entrenched in New Mexico jurisprudence that “a party must  
5 specifically challenge the delegation provision [of an arbitration agreement] in order  
6 for a court to consider the challenge rather than referring the matter to an arbitrator.”

7 *Clay v. N.M. Title Loans, Inc.*, 2012-NMCA-102, ¶ 11, 288 P.3d 888 (internal  
8 quotation marks and citation omitted); *see Sanchez*, 2024-NMSC-026, ¶¶ 11-14.

9 Exactly what constitutes such a challenge has been the source of much litigation in  
10 New Mexico over the years, leading to at times vexing notions of precisely what a  
11 plaintiff must do to challenge an arbitration agreement and, separately and  
12 specifically, challenge a delegation provision within the same arbitration agreement.

13 *See Szantho v. THI of N.M. at Sunset Villa, LLC*, 2025-NMCA-006, ¶¶ 12-15, 570  
14 P.3d 203 (noting that “[t]he question of who decides a particular issue—the district  
15 court or the arbitrator—is not new” and citing New Mexico and federal  
16 jurisprudence establishing the principles upon which such inquiries are resolved).

17 We believe our Supreme Court has recently rendered the waters a bit less muddy in

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<sup>1</sup>Plaintiff further contends the district court improperly resolved the disputed issue of mutual assent by employing the “duty to read” because that duty is inapplicable to a claim of procedural unconscionability. Because we agree with Plaintiff’s initial contention, we need not address the second.

1 this area of law. In *Sanchez*, the Court held that the plaintiff properly asserted the  
2 delegation clause of an arbitration agreement to be substantively unconscionable  
3 when the plaintiff argued in their response to the defendant’s motion to dismiss “the  
4 delegation provision is unenforceable for precisely the same reasons as the entire  
5 arbitration agreement.” 2024-NMSC-026, ¶ 4 (internal quotation marks and citation  
6 omitted). The agreement at issue in *Sanchez* precluded recovery of attorney fees and  
7 costs, which contradicted consumers’ right to recover attorney fees and costs under  
8 the Unfair Practices Act and other statutes. *Id.* Quoting the United States Supreme  
9 Court in *Rent-A-Center., West, Inc. v. Jackson*, 561 U.S. 63 (2010), for the  
10 proposition that “[i]t may be that had [the plaintiff] challenged the delegation  
11 provision by arguing that these common procedures as applied to the delegation  
12 provision rendered that provision unconscionable, the challenge should have been  
13 considered by the court,” *id.* at 74 (emphasis omitted), the *Sanchez* Court concluded  
14 “[t]his is exactly what [the p]laintiff did in this case.” 2024-NMSC-026, ¶ 18. Stated  
15 simply, the plaintiff in *Sanchez* asserted an unconscionability challenge, argued the  
16 challenge to be applicable to both the arbitration agreement and the delegation  
17 clause, and in so doing made the sort of challenge recognized as potentially viable  
18 by the United States Supreme Court and authorized by our Supreme Court.

1 {6} We reiterate that the district court did not have the benefit of *Sanchez*<sup>2</sup> when  
2 it dismissed Plaintiff’s complaint. Regardless, Plaintiff now asserts that under  
3 *Sanchez* she asserted a qualifying challenge to the delegation clause within the  
4 arbitration agreement she maintained was procedurally unconscionable. To this end,  
5 *Sanchez* spoke to what is required to specifically challenge a delegation clause. The  
6 Court held that “[a] challenge to a delegation clause will receive judicial review  
7 when the delegation clause itself is (1) specifically challenged on (2) such grounds  
8 as exist at law or in equity for the revocation of any contract.” *Id.* ¶ 15 (internal  
9 quotation marks and citation omitted). Our Supreme Court cited *Juarez*,<sup>3</sup> writing,  
10 “As *Juarez* illustrates, a party cannot claim that if the arbitration clause is

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<sup>2</sup>In reversing this Court’s determination that the delegation clause was not specifically challenged, *Sanchez* held that our decision “confused the requirement to specifically challenge a delegation clause with the merits of the challenge” by in part combining the latter two, and impermissibly modifying the third analytic step in the applicable legal inquiry, which asks, (1) “[I]s there clear and unmistakable evidence that the parties intended to delegate questions of arbitrability to an arbitrator”?; (2) “[I]f the parties have agreed to arbitrate threshold questions, in opposing arbitration, [the Court next asks whether] a party specifically challenged the arbitration provision”?; and (3) “[I]f the answers to the first two questions are [yes] . . . , is the arbitration provision unconscionable?” *Id.* ¶ 22 (emphasis omitted) (citing *Felts*, 2011-NMCA-062, ¶¶ 20-21, 27, 34). The parties in this case agree there is a delegation clause in the signed agreement, satisfying the first analytic step. As to the second, Plaintiff maintains she “went out of her way to preserve her challenge to the delegation clause . . . [specifically] to avoid the preservation problems that had been fatal to the plaintiff in *Juarez*.” Because we agree with Plaintiff in this regard, it is the third analytic step which must be taken on remand.

<sup>3</sup>Although Plaintiff initially declares that *Sanchez* “overruled” *Juarez*, she appears later to back off this contention, maintaining the former merely “limited and clarified” the latter. We agree that *Sanchez* clarified *Juarez* and *Felts*.

1 unenforceable, this also renders a delegation clause within the arbitration clause  
2 unenforceable.” *Sanchez*, 2024-NMSC-026, ¶ 15. But *Sanchez* pronounced that “a  
3 delegation clause *and* the arbitration agreement—or contract as a whole—may be  
4 unenforceable for the same reason.” *Id.* See generally *Juarez*, 2022-NMCA-056.  
5 Indeed, quoting *Juarez*, *Sanchez* reiterated that “[a] sufficiently specific challenge is  
6 one that ‘discusses the language or the application and enforcement of the delegation  
7 clause.’” *Sanchez*, 2024-NMSC-026, ¶ 15 (quoting *Juarez*, 2022-NMCA-056, ¶ 39).

8 {7} We read these sentences in *Sanchez* to provide that while it remains essential  
9 that a given challenge to an arbitration agreement is likewise “specific to the  
10 delegation clause,” *see id.* ¶ 21, the specificity rule applied in *Felts* and *Juarez* does  
11 not require that a challenge to an arbitration agreement and a challenge to a  
12 delegation clause be in any way based on different types of flaws. *Id.* Plaintiff asserts  
13 exactly this—that her challenge falls within the now-definitively permissible  
14 category of valid challenges under *Sanchez*: both the arbitration agreement and the  
15 delegation clause are unconscionable for the same reason. More specifically,  
16 Plaintiff maintains that because the arbitration agreement was a contract of  
17 adhesion—in other words, a changed yet mandatory condition of continued  
18 employment by Starbucks upon promotion or location transfer of any employee, as  
19 here applicable—the unilateral nature of the arbitration agreement rendered it  
20 procedurally unconscionable in all respects and as to all provisions therein. But

1 *Sanchez* did not disturb the requirement that the asserted challenge address the  
2 delegation clause, and we therefore turn to the record on appeal to ensure such was  
3 the case. Importantly, a reviewing court may locate such a challenge “not only  
4 [within a plaintiff’s] complaint, but also [their] motion papers and argument[s]  
5 below.” *Felts*, 2011-NMCA-062, ¶ 29. A successful such challenge “discusses the  
6 language or the application and enforcement of the delegation clause.” *Sanchez*,  
7 2024-NMSC-026, ¶ 15 (quoting *Juarez*, 2022-NMCA-056, ¶ 39). Here, focusing on  
8 application and enforcement of the clause in light of Plaintiff’s stated challenge  
9 thereto, we conclude that she did.

10 {8} Although absent from Plaintiff’s complaint itself or her response to  
11 Defendants’ motion to dismiss and compel arbitration, in her motion to reconsider  
12 Plaintiff explained to the district court that her procedural due process claim related  
13 to the formation of the contract itself, including the delegation clause of the  
14 arbitration agreement, both of which dealt with circumstances surrounding  
15 formation.<sup>4</sup> Plaintiff stated specifically that “the argument that an agreement is

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<sup>4</sup>Although our Supreme Court has as yet made no such distinction, Plaintiff separately emphasized the difference between a claim of substantive unconscionability, present when a provision of a contract impermissibly benefits one party over another or directly violates established rights of one party, and procedural unconscionability as it relates to any delegation clause within an arbitration agreement, identifying evaluation of the latter to be an issue of first impression in New Mexico. Given “[u]nconscionability is an affirmative defense to contract enforcement,” *Peavy ex rel. Peavy v. Skilled Healthcare Grp., Inc.*, 2020-NMSC-010, ¶ 10, 470 P.3d 218, “which allows courts to render unenforceable an agreement

1 procedurally unconscionable is also an argument that the delegation clause is not  
2 clear and unmistakable evidence of the parties’ intent to delegate arbitrability to an  
3 arbitrator—it was [effectively] coerced.” Plaintiff went so far as to expressly note  
4 inclusion of the delegation clause as a component of her claim of procedural  
5 unconscionability—to pointedly ensure the issue was “adequately raised” and  
6 “preserved for review”—citing *Juarez* for the proposition that it must be. *See* 2022-  
7 NMCA-056, ¶ 36. So, the district court was directly aware that Plaintiff’s argument  
8 was that the arbitration agreement was formed under circumstances that were  
9 coercive, and that Plaintiff meant the same argument to apply to all provisions of  
10 both contracts: the arbitration agreement by itself and the delegation clause, when  
11 severed from the larger agreement and treated as a separate contract. *See In re Est.*  
12 *of Keeney*, 1995-NMCA-102, ¶ 12, 121 N.M. 58, 908 P.2d 751 (stating a trial court  
13 may “consider new material as part of a motion for reconsideration under Rule [1-  
14 0]59 [NMRA] as long as the delay in presenting the new material is not just for  
15 strategic reasons, and its relevance outweighs any prejudice”); *Ramirez v. Ramirez*,  
16 1996-NMCA-116, ¶ 9, 122 N.M. 590, 929 P.2d 982 (stating issue to be “adequately

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that is unreasonably favorable to one party while precluding a meaningful choice of the other party,” *Cordova v. World Fin. Corp. of N.M.*, 2009-NMSC-021, ¶ 21, 146 N.M. 256, 208 P.3d 901, we too wonder whether a delegation clause could ever be enforceable if it is part of an arbitration agreement that is unenforceable because it was formed in a way that renders it procedurally unconscionable. Perhaps our Supreme Court will consider whether further clarification of our precedent in this regard would benefit this area of law.

1 preserved for appeal since the motion to reconsider was before the trial court prior  
2 to its entry of the order and it does raise this issue”); *Aken v. Plains Elec. Generation*  
3 *& Transmission Coop, Inc.*, 2002-NMSC-021, ¶¶ 9-10, 132 N.M. 401, 49 P.3d 662  
4 (holding that a motion to reconsider preserved constitutional issue in district court);  
5 *see also Sanchez*, 2024-NMSC-026, ¶ 4 (pointing both to the plaintiff’s response to  
6 the defendant’s motion to compel arbitration and to the plaintiff’s argument at a  
7 hearing on the motion to determine if the plaintiff argued that “the delegation clause  
8 itself is unconscionable and therefore unenforceable”).

9 {9} In our view, Plaintiff made clear her challenge to the arbitration agreement as  
10 a whole, as held by the district court, but also to the delegation clause within the  
11 arbitration agreement under *Sanchez*, which clarified *Juarez* and the cases upon  
12 which it relied. Given that the record reflects that Plaintiff specifically discussed the  
13 delegation clause within the broader arbitration agreement challenged on grounds of  
14 procedural unconscionability, the district court’s orders dismissing the case and  
15 compelling arbitration must be set aside.

16 **CONCLUSION**

17 {10} Based on the foregoing, we reverse and remand for further proceedings  
18 consistent with this opinion.

19 {11} **IT IS SO ORDERED.**

20   
21 **J. MILES HANISEE, Judge**

1 **WE CONCUR:**

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3 **ZACHARY A. IVES, Judge**

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5 **SHAMMARA H. HENDERSON, Judge**