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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TORREY LARSEN,

Plaintiff,

v.

REVERSE MORTGAGE SOLUTIONS,
INC., et al.,

Defendants.

Case No.: 3:15-cv-01512-L-MDD

**ORDER GRANTING MOTION TO
COMPEL ARBITRATION [Doc. 13]**

Pending before this Court is Defendants Reverse Mortgage Solution Inc. and Walter Investment Management Corporation’s (“Defendants”) Motion to Compel Torrey Larsen to submit his claims to arbitration. The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1(d.1). For the reasons stated below, the Court **GRANTS** Defendants’ Motion.

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1 **I. BACKGROUND**

2 Plaintiff Torrey Larsen (“Larsen”) is the former principal shareholder, President,
3 and Chief Executive Officer of Defendant Security One Lending. On December 31,
4 2012, Defendant Walter Investment Management Corporation (“WIMC”) entered into a
5 stock purchase agreement pursuant to which it acquired Security One Lending.
6 Subsequently, WIMC joined Security One Lending with Reverse Mortgage Solutions,
7 Inc. (“RMS”), a wholly owned subsidiary of WIMC.

8 Larsen and Defendants entered into an employment agreement in connection with
9 the sale of Security One Lending to WIMC. Under this agreement, Larsen agreed to
10 continue working for Security One Lending after its acquisition by RMS. Larsen
11 subsequently served as Executive Vice-President and President of Retail Lending. (Boyd
12 Decl. [Doc. 13-2] ¶ 11.) In this role, he was in charge of all aspects of Security One
13 Lending’s national operations, including the overseeing of accounting, payroll, human
14 resources, and the supervision of Distributed Retail Loan Officers. (Id.)

15 On March 30, 2013, Larsen signed an Employee Acknowledgment and Receipt
16 Form. (Ex. B [Doc. 13-3].) The EARF, in relevant part, states

17 I have received a copy of the ‘Employee Handbook’ . . .

18 * * *

19 I acknowledge that I have read and understand the Employee Dispute
20 Resolution Procedure contained in the Employee Handbook, including the
21 Arbitration Agreement. I agree to the terms of the Arbitration Agreement. I
22 acknowledge that the Arbitration Agreement is an enforceable contract; that
23 I am waiving the right to pursue claims in court; and that I will accept an
24 arbitrator’s award as the final, binding and exclusive determination of all
25 claims covered by the Arbitration Agreement.

26 (Id.)

27 The Arbitration Agreement contained in the Employee Handbook states

28 In consideration of the establishment or the continuation of your at will
employment, unless otherwise required by law, you agree that, except for
worker’s compensation or unemployment compensation benefit claims, any
and all complaints, disputes, claims, or causes of action arising out of, or
related to, your employment with the Company or the termination of your

1 employment, including, but not limited to, all state and federal statutory
2 employment claims, all contract claims, all tort claims, and all claims
3 regarding the applicability or enforceability of this agreement by you to
4 arbitrate, will be resolved by neutral, binding arbitration conducted by the
5 National Arbitration Forum ("NAF"), under the *Code of Procedure* of the
6 NAF effective at the time your claim is filed. If the NAF is unable or
7 unwilling to administer the arbitration of your claim, then you agree that the
8 American Arbitration Association will conduct the arbitration. Any
9 arbitration hearing at which you appear will take place at a location near
10 your residence. . .

11 * * *

12 You acknowledge and agree that your employment with the Company
13 involves interstate commerce and this agreement to arbitrate shall be subject
14 to the Federal Arbitration Act, as amended or supplemented.

15 * * *

16 You shall bear your own expenses of arbitration, except after you have paid
17 the first \$150 for any filing fee, the Company agrees to pay the remainder of
18 the filing fee (up to that filing fee payable for a claim equal to one year's
19 wages for the employee) and for the first two days of any arbitration hearing
20 or session.

21 * * *

22 **YOU UNDERSTAND THAT, ABSENT THIS AGREEMENT TO**
23 **ARBITRATE, YOU WOULD HAVE THE RIGHT TO SUE THE**
24 **COMPANY IN COURT, AND THE RIGHT TO A JURY TRIAL, BUT,**
25 **BY ESTABLISHING OR CONTINUING THE EMPLOYMENT**
26 **RELATIONSHIP, YOU GIVE UP THOSE RIGHTS AND AGREE TO**
27 **RESOLVE ANY AND ALL CLAIMS BY ARBITRATION.**

28 * * *

1 This arbitration agreement shall survive, and continue to be effective after,
2 the end of your employment relationship with the Company. If any provision
3 of this arbitration agreement is determined to be void or unenforceable, such
4 provision shall be severed and shall not affect the validity or enforceability
5 of the remainder of this agreement.

6 (Ex. A [Doc. 13-3].)

7 In March of 2014, Larsen tendered his resignation, intending to voluntarily sever
8 his employment relationship with Defendants. (Larsen Decl. [Doc. 18-2] ¶ 8.) However,
9 in a subsequent agreement with Keith Anderson, the former Chief Operating Officer of
10 WIMC, and Scott Clarke, the former President of RMS, Larsen withdrew his resignation.

1 Pursuant to this agreement, Larsen agreed to continue his employment with Defendants
2 on a full time basis until May of 2014 and on a part time basis from June through
3 December of 2014. (Id. ¶ 11.) This agreement provided that Larsen was to receive his
4 full compensation through 2014, regardless of whether Defendants terminated his
5 employment before that time. However, Larsen claims that Defendants terminated his
6 employment before December 2014 and refused to provide the continued compensation
7 the parties agreed upon.

8 Plaintiff filed the instant action on June 1, 2015, in California Superior Court,
9 County of San Diego, alleging (1) breach of contract, (2) breach of the implied covenant
10 of good faith and fair dealing, (3) promissory estoppel, (4) failure to pay wages in
11 violation of California Labor Code Sections 202 and 204, (5) fraud, and (6) unfair
12 business practices under California Business and Professions Code Section 17200. (See
13 Notice of Removal [Doc. 1].) Defendants removed the action to this Court on July 9,
14 2015. (See Id.) On July 27, 2015 Defendants' counsel advised Larsen's counsel of his
15 obligation to submit his claims to binding arbitration. (Quinn Decl. [Doc. 13-4] ¶ 3.)
16 Plaintiffs' counsel declined to submit the matter to binding arbitration. (Id. at ¶ 6.)
17 Accordingly, Defendants now move to compel arbitration. (See Defs.' Mot. [Doc. 13].)
18 Larsen opposes. (See Opp'n [Doc. 18].)
19

20 **II. APPLICABILITY OF THE FEDERAL ARBITRATION ACT**

21 The parties disagree as to whether the Federal Arbitration Act ("FAA") governs
22 here. Outside of the maritime context, the FAA only governs motions to compel
23 arbitration that involve a contract affecting interstate commerce. 9 U.S.C. § 2. *Citizens*
24 *Bank v. Alafabco Inc.*, 539 U.S. 52, 56 (2003). Larsen argues his employment did not
25 involve interstate commerce because he always worked in San Diego and he did not
26 originate mortgage transactions across state lines. (Opp'n 4:1–20, 17:22–18:21.) The
27 Court disagrees.

28 //

1 Even if a specific economic activity alone would not bear on interstate commerce
 2 in a substantial way, it suffices to trigger the interstate commerce jurisdictional hook of
 3 the FAA if the aggregate practice of which that economic activity is a part substantially
 4 affects interstate commerce. *Alafabco Inc.*, 539 U.S. at 56–57. Here, Larsen worked as
 5 the Executive Vice President and President of Retail Lending. (Larsen Decl. ¶ 5.) In this
 6 capacity, he was responsible for “all aspects of [Defendants’] national operations, in
 7 addition to overseeing accounting, payroll, human resources, [and] supervising
 8 Distributed Retail Loan Officers who are located throughout the United States, and
 9 compliance.” (Boyd Decl. ¶ 11.) In the aggregate, there is no question that the executive
 10 level management of retail mortgage lending has a substantial effect on interstate
 11 commerce. Thus, the FAA governs this dispute. Because the FAA preempts all
 12 conflicting state law¹ the Court need not consider Larsen’s argument (see Opp’n 13:19 –
 13 14:5) that Cal. Lab. Code § 229 entitles him to a judicial forum on his statutory claims
 14 even if the Arbitration Agreement is valid.

15 16 **III. VALIDITY OF THE ARBITRATION AGREEMENT**

17 Under the FAA, a Court need consider only two questions to determine whether to
 18 compel arbitration: (1) is there a valid agreement to arbitrate? And, if so, (2) does the
 19 agreement cover the matter in dispute? *Chiron Corp. v. Ortho Diagnostic Systems, Inc.*,
 20 207 F.3d 1126, 1130 (9th Cir. 2000). Here, there is no dispute as to whether the
 21 Arbitration Agreement covers Larsen’s claim.² Accordingly, the Court need only
 22 consider whether the Arbitration Agreement is valid.³

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25 ¹ See *Perry v. Thomas*, 482 U.S. 483, 492 (1987).

26 ² Even if there was a dispute, it would be for the arbitrator, not the Court, to decide. The Arbitration
 27 Agreement is valid and it provides that “the applicability . . . of this agreement by you to arbitrate, will
 28 be resolved by neutral, binding arbitration.” (Ex. A.)

³ Defendants argue that the Court cannot rule on the enforceability or applicability of the Arbitration
 Agreement because the Agreement provides that such issues must be submitted to the arbitrator. (Defs.’
 Mot. 3:24–4:22.) However, where, as here, a party challenges the validity of an arbitration agreement

1 An agreement to arbitrate is “valid, irrevocable, and enforceable, save upon such
2 grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2.
3 Under California law, the elements of a valid contract are (1) parties capable of
4 contracting; (2) mutual consent; (3) a lawful object; and (4) consideration. Cal. Civ. Code
5 § 1550. However, a court will not enforce an otherwise valid contract if there exists a
6 viable defense, such as unconscionability. 1 Witkin, Summary 10th (2005) Contracts, §
7 331, p. 365. Larsen argues that the Arbitration Agreement is unenforceable because (1)
8 Larsen did not consent to it; (2) Defendants did not provide any consideration in
9 exchange for Larsen’s agreement to arbitrate; and (3) the Arbitration Agreement is
10 unconscionable.

11 **A. Mutual Consent**

12 Larsen argues that he did not consent to the Arbitration Agreement because the
13 Employment Acknowledgment and Receipt Form did not reference a prior employment
14 agreement between him and Defendants that contained a different arbitration agreement.
15 (Opp’n 11:11–12:9.) The Court disagrees. Larsen does not cite to any authority for the
16 proposition that a subsequent agreement is valid only if it explicitly references a prior
17 agreement regarding the same general subject, and the Court is unaware of any. Thus,
18 the dispositive question on this issue is simply whether the parties agreed to the terms of
19 the new Arbitration Agreement, regardless of whether these terms are similar or different
20 from the previous agreement.

21 Under California law, “mutual consent is gathered from the reasonable meaning of
22 the words and acts of the parties, and not from their unexpressed intentions or
23 understanding.” 1 Witkin, Summary 10th (2005) Contracts, § 116, p. 155. Here, Larsen
24 signed the Employment Acknowledgment and Receipt Form. In relevant part, the EARF
25 states

26 _____
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28 specifically, as opposed to the employment contract generally, a Court must consider the merits of the
challenging party’s argument. *See Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 70 (2010).

1 *I acknowledge that I have read and understand the Employee Dispute*
2 *Resolution Procedure contained in the Employee Handbook, including the*
3 *Arbitration Agreement. I agree to the terms of the Arbitration Agreement. I*
4 *acknowledge that the Arbitration Agreement is an enforceable contract; that*
5 *I am waiving the right to pursue claims in court; and that I will accept an*
6 *arbitrator's award as the final, binding and exclusive determination of all*
7 *claims covered by the Arbitration Agreement.*

8 (Ex. B.) (emphasis added.) This language is clear and unequivocal in conveying that, by
9 signing, Larsen is agreeing to the provisions of the Arbitration Agreement contained in
10 the Employee Handbook. Thus, because Defendants prepared and presented this
11 document to Larsen and Larsen signed it, the Court finds that the parties mutually
12 consented to the provisions of the Arbitration Agreement.⁴

13 **B. Consideration**

14 Larsen argues that Defendants did not provide any consideration in exchange for
15 his agreement to arbitrate. (Opp'n 12:10-13:15.) Instead, Larsen argues that the
16 Arbitration Agreement compels only him to submit claims to arbitration, leaving
17 Defendants free to file their claims in court.

18 The Court disagrees with this reading of the Arbitration Agreement. In relevant
19 part, the language of the Agreement reads

20 . . . except for worker's compensation or unemployment compensation
21 benefit claims, *any and all complaints*, disputes, claims, or causes of action
22 *arising out of*, or related to, *your employment* with the Company or the
23 termination of your employment, including but not limited to, all state and
24 federal statutory employment claims, all contract claims, all tort claims, and
25 all claims regarding the applicability or enforceability of this agreement by
26 you to arbitrate, *will be resolved by neutral, binding arbitration*. . . .

26 ⁴ Larsen also argues that mutual consent is lacking because Defendants did not sign the agreement.
27 (Opp'n 11:19–12:6.) However, Larson does not explain why the lack of Defendants' signature is
28 significant in determining whether Defendants consented to this agreement, and the Court thinks there
can be no dispute that Defendants consented to the Arbitration Agreement here. Indeed, it was
Defendants who prepared the document and asked Larsen to agree to it.

1 (Ex. A) (emphasis added.) The Court reads this language as providing that all claims
2 (other than workers compensation and unemployment claims) arising out of the
3 employment relationship must go to the arbitrator, regardless of which party brings them.
4 Thus, each party agreed to arbitration in consideration for the other doing the same.
5 Accordingly, the Court finds the consideration element satisfied.

6 7 **C. Unconscionability**

8 Larsen argues that the Arbitration Agreement is unenforceable because it is
9 unconscionable. (Opp’n 18:22–23:18.) Unconscionability carries both a procedural and
10 a substantive element, and a court can refuse to enforce a contract or portion thereof as
11 unconscionable only if both are satisfied. *Armendariz v. Foundation Health Psychcare*
12 *Servs.*, 24 Cal. 4th 83, 114 (2000).

13 “The procedural element generally takes the form of an adhesion contract, which
14 imposed and drafted by the party of superior bargaining strength, relegates to the
15 subscribing party only the opportunity to adhere to the contract or reject it.” *Fitz v. NCR*
16 *Corp.*, 118 Cal. App. 4th 702, 713 (2004). Here, the Arbitration Agreement was imposed
17 and drafted by Defendants, who, as the employer, appear to be the party of superior
18 bargaining strength. Further, Defendants do not dispute Larsen’s claim that he “never
19 had an opportunity to negotiate the provisions of the Employee Handbook or the
20 language in the Employee Acknowledgment and Receipt Form.” (Opp’n 19:27–20:1.)
21 Accordingly, the Court finds the Arbitration Agreement procedurally unconscionable.

22 Larsen presents three arguments as to why the Arbitration Agreement is also
23 substantively unconscionable. “The substantive element of unconscionability focuses on
24 the actual terms of the agreement and evaluates whether they create overly harsh or one-
25 sided results, that is, whether contractual provisions reallocate risks in an objectively
26 unreasonable or unexpected manner. To be substantively unconscionable, a contractual
27 provision must shock the conscience.” *Baker v. Osborne Dev. Corp.*, 159 Cal. App. 4th
28 884, 894 (9th Cir. 2008) (internal quotation marks and citations omitted).

1 First, Larsen argues that the unilateral nature of the Arbitration Agreement
2 compels a finding of unconscionability. Having already concluded that the Agreement
3 requires both parties to submit their claims to arbitration, the Court finds this argument
4 unpersuasive.

5 Second, Larsen argues that the Arbitration Agreement is substantively
6 unconscionable because it provides for inadequate discovery. (Opp'n 22:5–23:2.) An
7 agreement to arbitrate matters arising out of an employment relationship is lawful only if
8 provides for more than minimal discovery. *Armendariz*, 24 Cal. 4th at 102, 104–6.
9 Larsen argues that the Arbitration Agreement does not provide for adequate discovery
10 because it does not ensure his ability to depose two critical witnesses who are located out
11 of state and no longer employed by Defendants.

12 The Court disagrees. The parties agreed that any arbitration would be governed by
13 the National Arbitration Forum's Code of Procedure. Rule 29(B)(1) of that code
14 provides that

15 a party may seek the disclosure of Documents, sworn answers to not more
16 than twenty-five (25) Written questions, and one or more depositions before
17 a Hearing where; **a.** the information sought is relevant to a Claim or
18 Response, reliable, and informative to the arbitrator; and **b.** the production of
19 the information sought is reasonable and not unduly burdensome and
20 expensive.

21 (Ex. B [Doc. 13-5] 34.) If, as Larsen contends, the deposition of these two witnesses is
22 critical to his case, Rule 29(B)(1) would appear to allow the arbitrator to issue an order
23 permitting Larsen to depose them. Regardless, the Court finds that the broad scope of
24 discovery permitted by Rule 29(B) amounts to more than “minimal discovery.”

25 Finally, Larsen argues that the Arbitration Agreement is substantively
26 unconscionable because it requires him to incur fees he would not incur if he brought his
27 claim in court. (Opp'n 23:3–18.) The Court agrees. The Supreme Court of California
28 has declared that “when an employer imposes mandatory arbitration as a condition of
employment, the arbitration agreement or arbitration process cannot generally require the

1 employee to bear any *type* of expense that the employee would not be required to bear if
2 he or she were free to bring the action in court.” *Armendariz*, 24 Cal. 4th at 110–11
3 (emphasis original). The Arbitration Agreement states

4 [y]ou [Larsen] shall bear your own expenses of arbitration, except after you
5 have paid the first \$150 for any filing fee, the Company agrees to pay the
6 remainder of the filing fee (up to that filing fee payable for a claim equal to
7 one year’s wages for the employee) and for the first two days of any
arbitration hearing or session.

8 (Ex. A.) Thus, under the Arbitration Agreement, Larsen might have to pay arbitration
9 filing, session, and hearing fees. If Larsen were able to bring his claims in court, he
10 would not have to incur these types of expenses. Accordingly, the Court finds the
11 Arbitration Agreement substantively unconscionable inasmuch as it could require him to
12 pay arbitration fees.

13 However, the Arbitration Agreement contains a severability clause that provides
14 If any provision of this arbitration agreement is determined to be void or
15 unenforceable, such provision shall be severed and shall not affect the
16 validity or enforceability of the remainder of this agreement.

17 (Ex. A.) Furthermore, “[a] court, in its discretion, may refuse to enforce the contract as a
18 whole if it is permeated by the unconscionability, or it may strike any single clause or
19 group of clauses which are so tainted or which are contrary to the essential purpose of the
20 agreement, or it may simply limit unconscionable clauses so as to avoid unconscionable
21 results.” *Armendariz*, 24 Cal. 4th at 122 (*citing* Comment 2 of the Legislative Committee
22 comment on Civil Code § 1670.5). Because the parties agreed to sever any
23 unconscionable provisions and the Arbitration Agreement is not permeated by
24 unconscionability, the Court strikes the provision of the Arbitration Agreement that
25 requires Larsen to pay any arbitration fees to the arbitrator. Defendants shall bear all
26 such costs.

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1 **IV. EXPLICIT WAIVER OF STATUTORY CLAIMS**

2 Larsen contends that, even if there is a valid agreement to arbitrate that covers this
3 dispute, it is inapplicable to his wage claims brought under California Labor Code
4 Sections 202 and 204. (Opp’n 14:6–15:22.) The gist of Larsen’s argument is that an
5 arbitration agreement does not apply to statutory claims unless it is “clear and
6 unmistakable” that the parties intended to waive a judicial forum for a specific statutory
7 claim. Further, Larsen seems to contend that such a “clear and unmistakable” intent is
8 not present where, as here, the agreement does not specifically mention each statutory
9 claim to which it applies.

10 The Court disagrees. Even assuming that an agreement to arbitrate California
11 Labor Code claims must be “clear and unmistakable,” the Court finds that Larsen’s
12 agreement to the language contained in the Arbitration Agreement evidences such an
13 intent. It is true that this language does not specifically reference California Labor Code
14 Sections 202 and 204. However, these Labor Code sections govern the timely payment
15 of earned wages. The Court finds that there can be no doubt that by agreeing to arbitrate
16 “all state . . . statutory employment claims” the parties clearly and unmistakably agreed to
17 arbitrate Labor Code claims for the untimely payment of earned wages.


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1 **V. CONCLUSION AND ORDER**

2 Because a valid arbitration agreement governs this dispute, the Court **GRANTS**
3 Defendants Motion to compel arbitration. Accordingly, the Court orders as follows:

- 4 1. The provision in the Arbitration Agreement requiring Larsen to bear a portion
5 of the arbitration filing, hearing, or session fees is stricken. Defendants shall
6 pay the arbitrator's fees.
- 7 2. Larsen's Complaint is dismissed without prejudice.
- 8

9 Dated: March 29, 2016

10 
11 Hon. M. James Lorenz
12 United States District Judge

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