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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILADELPHIA INDEMNITY
INSURANCE COMPANY, a
Pennsylvania corporation,

Petitioner,

v.

THE CITY OF FRESNO, a
municipal corporation,

Respondent.

No. 2:16-cv-495-JAM-KJN

**ORDER GRANTING PETITIONER'S
PETITION TO COMPEL ARBITRATION**

Petitioner Philadelphia Indemnity Insurance Company ("Philadelphia") petitions the Court for an order compelling The City of Fresno ("Fresno") to proceed to arbitration in accordance with an alleged arbitration agreement. For the reasons stated below, the Court grants the petition and orders Fresno to proceed with arbitration.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 28, 2016.

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Fresno, through SMG Holdings, Inc., entered into a licensing agreement with the California Association of Future Farmers of America ("Future Farmers") for Future Farmers to use a portion of the Fresno Convention and Entertainment Center. Petition to Compel Arbitration ("Petition") (Doc. #1) ¶ 5. The licensing agreement required Future Farmers to obtain liability insurance. Id. In accordance with this requirement, Future Farmers entered into a liability insurance policy with Philadelphia (the "Future Farmers Policy"). Id. ¶ 8. The Future Farmers Policy states that either party may demand arbitration if a dispute arises over the scope of coverage. Id. ¶ 10.

In April 2013, Timothy Sailors ("Sailors") allegedly slipped and fell in the parking lot of the Fresno Convention Center on his way to a Future Farmers event. Id. ¶ 7; Memorandum ("Memo") (Doc. #7) at 2. Sailors and his employer, Reef Sunset Unified School District ("Reef"), sued Fresno to recover for his injuries and for the employment benefits Reef paid to Sailors after he was injured. Petition ¶¶ 6-7. The cases were consolidated and Future Farmers was added as a defendant. Id. ¶ 6.

Fresno has demanded that Philadelphia defend and indemnify Fresno pursuant to the Future Farmers Policy because Fresno contends it is an additional insured under the Policy. Memo at 2. Philadelphia has refused to defend or indemnify Fresno. Id. Philadelphia believes that the dispute over whether Philadelphia must indemnify Fresno should be submitted to arbitration in accordance with the arbitration clause of the Future Farmers Policy. Id. Fresno has declined to acknowledge the arbitration

1 requirement. Id. Philadelphia now moves for an order requiring
2 Fresno to submit the coverage dispute to binding arbitration
3 pursuant to the arbitration clause in the Future Farmers Policy.
4 Petition ¶ 11. Fresno did not oppose Philadelphia's petition.

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6 II. OPINION

7 A. Judicial Notice

8 Philadelphia submitted a request for judicial notice
9 ("RJN") (Doc. #9) of the following items: (1) Philadelphia's
10 petition to compel arbitration filed in this action on March 9,
11 2016 (RJN, Exh. #1); (2) the first amended complaint in Sailors
12 v. City of Fresno, Fresno Superior Court Action No. 14 CE CG
13 00069 MBS (RJN, Exh. #2); and (3) the complaint in Reef Sunset
14 Unified School District v. City of Fresno, Fresno Superior Court
15 Action No. 14 CE CG 00807 (RJN, Exh. #3). Fresno did not oppose
16 Philadelphia's request for judicial notice.

17 A court may take judicial notice of a fact that is not
18 reasonably disputed if it "can be accurately and readily
19 determined from sources whose accuracy cannot reasonably be
20 questioned." Fed. R. Evid. 201(b)(2). Courts are allowed to
21 take judicial notice of "matters of public record." Northstar
22 Fin. Advisors Inc. v. Schwab Investments, 779 F.3d 1036, 1042
23 (9th Cir. 2015). Since all three exhibits are part of the
24 public record and are not subject to reasonable dispute, the
25 Court takes judicial notice of all three exhibits.

26 B. Legal Standard

27 The FAA permits a party "aggrieved by the alleged failure,
28 neglect, or refusal of another to arbitrate" in accordance with a

1 written arbitration agreement to petition a district court for an
2 order directing the parties to proceed to arbitration. 9 U.S.C.
3 § 4. When deciding such a petition, the court's sole role is
4 "determining [1] whether a valid arbitration agreement exists
5 and, if so, [2] whether the agreement encompasses the dispute at
6 issue." Lifescan, Inc. v. Premier Diabetic Sevs., Inc., 363 F.3d
7 1010, 1012 (9th Cir. 2004). There is a "strong federal policy
8 favoring arbitral dispute resolution," Simula, Inc. v. Autoliv,
9 Inc., 175 F.3d 716, 720 (9th Cir. 1999), and courts have been
10 directed to resolve "any doubts concerning the scope of
11 arbitrable issues . . . in favor of arbitration." Moses H. Cone
12 Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983).
13 As such, the Supreme Court has held that a party seeking to avoid
14 arbitration under the FAA bears the burden of proving that the
15 claims are unsuitable for arbitration. Green Tree Fin. Corp.-
16 Alabama v. Randolph, 531 U.S. 79, 91-92 (2000).

17 C. Analysis

18 As noted above, Fresno did not oppose Philadelphia's
19 petition to compel arbitration and therefore failed to challenge
20 "the strong federal policy favoring arbitral dispute resolution."
21 Simula, 175 F.3d at 720. On that basis alone, the Court could
22 grant Philadelphia's petition. Green Tree Fin, 531 U.S. at 91
23 ("the party resisting arbitration bears the burden of proving
24 that the claims at issue are unsuitable for arbitration.").
25 Still, the Court must analyze whether the arbitration agreement
26 is valid between Philadelphia and Fresno and whether it covers
27 their present dispute. Lifescan, 63 F.3d at 1012.

28 A valid arbitration agreement certainly exists between

1 Philadelphia and Future Farmers – the two signatories to the
2 Future Farmers Policy. The Future Farmers Policy states that
3 “either party may make a written demand for arbitration” if
4 “[Philadelphia] and [Future Farmers] do not agree whether
5 coverage is provided . . . for a claim made against the insured.”
6 Larkin Decl., Exh. 11, at 14. The issue is whether this valid
7 arbitration agreement between Philadelphia and Future Farmers may
8 also bind Fresno even though Fresno is not an official signatory
9 to the policy. Since Fresno did not file any opposition to the
10 motion to compel arbitration, the Court presumes that Fresno
11 concedes that it is bound by the arbitration agreement.

12 Even though Fresno was not a signatory to the Future Farmers
13 policy, Fresno is seeking to benefit from the policy by claiming
14 that it is an additional insured and that Philadelphia must
15 indemnify and defend Fresno in the Sailors litigation pursuant to
16 the Policy. Given that Fresno seeks to benefit from the Future
17 Farmers Policy, it cannot then turn around and argue that the
18 arbitration clause in the Policy does not apply to Fresno. The
19 Ninth Circuit has held that “equitable estoppel precludes a party
20 from claiming the benefits of a contract while simultaneously
21 attempting to avoid the burdens that contract imposes.” Mundi v.
22 Union Sec. Life Ins. Co., 555 F.3d 1042, 1045 (9th Cir. 2009);
23 Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir. 2006)
24 (“nonsignatories have been held to arbitration clauses where the
25 nonsignatory knowingly exploits the agreement containing the
26 arbitration clause despite having never signed the agreement.”).
27 Thus, the arbitration agreement is valid and enforceable between
28 Philadelphia and Fresno.

