UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMBER FIRDOUS,

Plaintiff,

v.

CREDIT ACCEPTANCE CORPORATION,

Defendant.
_____/

CASE NO. 1:17-CV-215

HON. ROBERT J. JONKER

ORDER

This matter arises out of the sale of a vehicle by a non-party auto dealership to *pro se* Plaintiff Amber Firdous ("Plaintiff"), with financing provided by Defendant Credit Acceptance Corporation ("Defendant"). Plaintiff alleges violations of the Truth in Lending Act, 15 U.S.C. § 1638(b); the Michigan Motor Vehicle Sales Finance Act, M.C.L. § 492.106, *et seq.*; the Michigan Retail Installment Sales Act, M.C.L. § 445.853, *et seq.*; the Michigan Consumer Protection Act, M.C.L. § 445.901 *et seq.*; and common-law fraudulent misrepresentation, fraud in the inducement, breach of fiduciary duty, negligent misrepresentation, breach of contract, and unjust enrichment (ECF No. 1, PageID.7-20). Defendant has filed a Motion to Compel Arbitration and to Dismiss the Case or, in the Alternative, to Stay all Proceedings under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, citing the written arbitration agreement signed by Plaintiff (ECF No. 6). Plaintiff argues that the arbitration clause is unconscionable (ECF No. 8). After reviewing the motion and Plaintiff's response, the Court concludes that further briefing and a hearing are unnecessary. *See* W.D. LR 7.2(d)(2). For the reasons detailed below, the Court grants Defendant's motion.

BACKGROUND

Plaintiff entered into a retail installment contract ("RIC") with KC's Budget Auto LLC/KC's Auto Land ("the Dealership") for the purchase of a 2010 Chevrolet Cobalt. The Dealership immediately assigned the RIC to Defendant Credit Acceptance. The written contract contained an arbitration clause (ECF No. 9-1, PageID.124-125). On the second page, two provisions refer to the arbitration clause:

> **ARBITRATION NOTICE**: PLEASE SEE PAGE 4 OF THIS CONTRACT FOR INFORMATION REGARDING THE **AGREEMENT TO ARBITRATE** CONTAINED IN THIS CONTRACT.
>
> **ADDITIONAL TERMS AND CONDITIONS**: THE ADDITIONAL TERMS AND CONDITIONS, INCLUDING THE **AGREEMENT TO ARBITRATE** SET FORTH ON THE ADDITIONAL PAGES OF THIS CONTRACT ARE A PART OF THIS CONTRACT AND ARE INCORPORATED BY REFERENCE.

Id. at PageID.122 (emphasis in original). Plaintiff signed her initials below both of these notices at the time she entered into the RIC. The arbitration clause, located on the fourth page of the contract, provides, in pertinent part:

> A "Dispute" is any controversy or claim between You and us arising out of or in any way related to this Contract, including, but not limited to, any default under this Contract, the purchase, sale, delivery, set-up, quality of the Vehicle, advertising for the Vehicle or its financing, or any product or service included in this Contract. "Dispute" shall have the broadest meaning possible, and includes contract claims, and claims based on [sic] tort, violations of laws, statutes, ordinances, or regulations or any other legal or equitable theories.
> . . .
> Either You or We may require any Dispute to be arbitrated and may do so before or after a lawsuit has been started over the Dispute or with respect to other Disputes or counterclaims brought later in the lawsuit . . . . A Dispute shall be fully resolved by binding arbitration . . . .
> . . .
> If You or We elect to arbitrate a Dispute, neither You nor We will have the right to pursue that Dispute in court or have a jury resolve that dispute.
> . . .

> It is expressly agreed that this Contract evidences a transaction in interstate commerce. This Arbitration Clause is governed by the FAA and not by any state arbitration law.

Id. at PageID.125. Plaintiff signed the RIC containing this clause. Plaintiff had the right to reject the arbitration clause without affecting the balance of the RIC by mailing a written rejection notice to Defendant. *Id.* at PageID.124. It is undisputed that Plaintiff did not exercise this right.

DISCUSSION

The FAA provides that every written provision in a contract "evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of such contract." 9 U.S.C. § 2. Under the FAA, federal courts are required to stay an action when an issue in the action is referable to arbitration and compel arbitration when a party fails or refuses to comply with an enforceable contract provision. *See* 9 U.S.C. §§ 3, 4; *Highlands Wellmont Health Network, Inc. v. John Deere Health Plan, Inc.*, 350 F.3d 568, 573 (6th Cir. 2003).

The Supreme Court has interpreted the FAA as "a liberal federal policy favoring arbitration agreements" which "requires [federal courts] to rigorously enforce agreements to arbitrate." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625-26 (1985) (citations omitted). The Sixth Circuit has provided the following framework for addressing motions to compel arbitration under the FAA:

> [A] court has four tasks: first, it must determine whether the parties agreed to arbitrate; second, it must determine the scope of that agreement; third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be nonarbitrable; and fourth, if the court concludes that some, but not all, of the claims in the action are subject to arbitration, it must determine whether to stay the remainder of the proceedings pending arbitration.

Glazer v. Lehman Bros., 394 F.3d 444, 451 (6th Cir. 2005) (quoting *Stout v. J.D. Byrider*, 228 F.3d 709, 714 (6th Cir. 2000)). "It is well-established that any doubts regarding arbitrability should be resolved in favor of arbitration." *Id.* (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)).

The Court finds that the arbitration clause at issue here is enforceable. First, the parties agreed to arbitrate. The parties signed the RIC containing the arbitration clause (ECF No. 6, PageID.53). It is undisputed that Plaintiff did not exercise her right to reject the arbitration clause. Second, the scope of the arbitration clause is broad. The clause provides for the arbitration of "any Dispute" and defines "Dispute" to "have the broadest meaning possible . . . includ[ing] contract claims, and claims based on [sic] tort, violations of laws, statutes, ordinances or regulations or any other legal or equitable theories." *Id.* at PageID.56. Accordingly, the plain language of the arbitration clause clearly calls for a broad scope. Third, nothing suggests that Congress intended to exempt Plaintiff's claims from arbitration. "The burden is on the party opposing arbitration . . . to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." *Shearson/Am Exp., Inc. v. McMahon*, 482 U.S. 220, 227 (1987). Plaintiff fails to address this issue and the Court sees no basis for precluding arbitration of Plaintiff's claims. *See id.*

Plaintiff does not seriously dispute any of this, but argues that the arbitration clause is unconscionable. The Court disagrees. Courts have upheld almost identical arbitration provisions in other cases. *See Credit Acceptance Corp. v. Davisson*, 644 F. Supp. 2d 948, 958-59 (N.D. Ohio 2009); *West v. Legacy Motors, Inc.*, No. 16-cv-12101, 2016 WL 6476458, at *1 (E.D. Mich. Nov. 2, 2016). Plaintiff's suggestion that she had no notice of the arbitration clause is belied by two conspicuous notices regarding the arbitration clause right above her signature and the arbitration

clause itself (on pages she separately initialed) (ECF No. 6, PageID.53-56). Plaintiff also claims the arbitration clause is substantively unconscionable because she "was not given a choice in any of the contract modifications" and she "had no reasonable alternative but to accept the terms being forced upon her." (ECF No. 8, PageID.107). The RIC, however, plainly provides an option to reject the arbitration clause (ECF No. 6, PageID.55). Plaintiff chose not to exercise this option. There is no basis for a finding of unconscionability.

Finally, because all of Plaintiff's claims are subject to arbitration, the Court sees no basis to stay this proceeding rather than dismiss without prejudice. *See Glazer*, 394 F.3d at 451.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that Defendant's Motion to Compel Arbitration and to Dismiss the Case or, in the Alternative, to Stay all Proceedings (ECF No. 6), is **GRANTED**. This case is **DISMISSED WITHOUT PREJUDICE** to the parties' right to re-open this case for entry of an arbitration award or for any other relief to which the parties may be entitled.

IT IS FURTHER ORDERED that the parties are directed to proceed with arbitration of Plaintiff's claims under the terms of the agreement to arbitrate.

IT IS SO ORDERED.

Dated: March 30, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE