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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEX KHASHAKI,)	CASE NO. CV 17-526-R
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS’
)	MOTION TO COMPEL ARBITRATION
v.)	AND STAY CASE PENDING
)	ARBITRATION
LOWE’S HIW, INC.; et al.)	
Defendants.)	
)	
)	

Before the Court is Defendants’ Motion to Compel Arbitration and Stay Plaintiff’s Claims Pending Arbitration (Dkt. No. 7) which was filed on January 27, 2017. Having been thoroughly briefed by both parties, this Court took the matter under submission on February 28, 2017.

Plaintiff signed a contract with Defendants for the installation of windows and patio doors at Plaintiff’s residence. Plaintiff alleges that the installation of the windows and doors was deficient. As a result, Plaintiff alleges that his home was unfinished and “vulnerable to noise and water intrusion.” Accordingly, Plaintiff brings suit to recover damages. Roughly halfway down the first page, the Contract states:

“This contract provides that all claims by Customer or Lowe’s will be resolved by BINDING ARBITRATION. Customer and Lowe’s GIVE UP THE RIGHT TO GO TO COURT to enforce this contract (EXCEPT for matters that may be taken to

1 SMALL CLAIMS COURT). Lowe's and Customer's rights will be determined by
2 a neutral arbitrator and not a judge or jury. Lowe's and Customer are entitled to a
3 FAIR HEARING. But the arbitration procedures are simpler and more limited than
4 rules applicable in court. Arbitrator decisions are as enforceable as any court order
and are subject to very limited review by a court, for more details: Review [sic] the
section titled arbitration agreement, waiver of jury trial and waiver of class action
adjudication found in the Terms and Conditions of this Contract.”

5 (Dkt. No. 7, Ex. A). Immediately beneath this passage, the Contract instructs that parties should
6 not sign until reading all the terms and conditions. (*Id.*) Beneath the instruction to read all terms
7 and conditions, a representative of Lowe's and Mr. Khashaki signed the Contract. (*Id.*) Within
8 the Terms and Conditions attachment to the Contract there is further discussion and explanation of
9 the arbitration agreement. (*Id.*) Beneath the further discussion and explanation is a line for both
10 the customer and Lowe's initials. (*Id.*) Neither party initialed in the designated lines. (*Id.*)

11 The terms of the arbitration agreement explain that any arbitration will be conducted by an
12 arbitrator from the American Arbitration Association (“AAA”). (*Id.*) The location of the
13 arbitration is either where the premises is located or at a mutually agreed upon location. (*Id.*)
14 Additionally, Lowes agrees to pay for the fees associated with the arbitration regardless of
15 whether it wins or loses, the agreement is binding on claims raised by both parties, and the
16 arbitration is governed by the rules of AAA. (*Id.*)

17 Both California and federal law strongly favor enforcement of arbitration agreements. The
18 California Supreme Court has stated that there is a “strong public policy in favor of arbitration as a
19 speedy and relatively inexpensive means of dispute resolution.” *Ericksen, Arbuthnot, McCarthy,*
20 *Kearny & Walsh v. 100 Oak St.*, 35 Cal. 312, 322 (1983). The Supreme Court has construed
21 Section 2 of the Federal Arbitration Act (“FAA”) as “reflecting both a ‘liberal federal policy
22 favoring arbitration,’ and the ‘fundamental principle that arbitration is a matter of contract.’”
23 *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 339 (2011). The FAA provides that
24 “arbitration agreements generally ‘shall be valid, irrevocable, and enforceable’ except when
25 grounds ‘exist at law or in equity for the revocation of any contract.’” *Circuit City Stores, Inc. v.*
26 *Mantor*, 335 F.3d 1101, 1105 (9th Cir. 2003). Arbitration agreements are interpreted according to
27 state contract law with the federal policy in favor of arbitration resolving any ambiguities in favor
28 of arbitration. *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1044 (9th Cir. 2009).

1 Defendants argue that all of Plaintiff's claims are based on the Contract and therefore are
2 covered by the arbitration agreement. In opposition, Plaintiff argues that because he did not initial
3 beneath the arbitration section of the Terms and Conditions, he did not agree to arbitrate claims
4 against Lowe's based on the Contract. Additionally, Plaintiff argues that the arbitration agreement
5 is unconscionable. This Court finds that a valid arbitration agreement exists, and the Plaintiff's
6 claims are covered by the arbitration agreement.

7 The Contract contains an arbitration clause one paragraph above Plaintiff and Defendant's
8 signatures. The arbitration clause includes important terms in all capital letters and is written in
9 terms easily understood by any reader. Defendants argue that this clause and Plaintiff's signature
10 beneath it are sufficient to bind Plaintiff to arbitration. In his opposition, Plaintiff does not discuss
11 this provision or his signature in anyway. Generally, "[f]ailure to respond in an opposition brief to
12 an argument put forward in an opening brief constitutes waiver or abandonment in regard to the
13 uncontested issue." *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d
14 1125, 1132 (C.D. Cal. 2011). Furthermore, this arbitration clause fits squarely within the
15 requirements of the FAA and is therefore "valid, irrevocable, and enforceable, save upon such
16 grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. As Plaintiff
17 makes no dispute as to the validity of the document, the sufficiency of the arbitration provision, or
18 the enforceability of the contract, this Court finds that the Contract contains a valid arbitration
19 agreement subject to grounds at law or in equity for revocation of any contract.

20 Having found that the Contract contains a valid arbitration agreement, it is of no
21 consequence that Plaintiff did not initial beneath the arbitration section of the Terms and
22 Conditions of the Contract. Plaintiff had already signed the Contract which contained an
23 arbitration provision one paragraph above his signature.

24 State law governs the unconscionability of arbitration agreements. *Circuit City Stores,*
25 *Inc.*, 335 F.3d at 1105. Under California law, courts evaluate the procedural and substantive
26 unconscionability of a contract, "the former focusing on oppression or surprise due to unequal
27 bargaining power, the latter on overly harsh or one-sided results." *Sonic-Calabasas A, Inc. v.*
28 *Moreno*, 57 Cal. 4th 1109, 1133 (2013). Plaintiff argues that the arbitration provisions in the

1 Contract were not within Plaintiff’s “reasonable expectations” in a home improvement contract
2 and that the arbitration provision forces Plaintiff “to give up ordinary contract rights.”

3 The Contract does not rise to the level of unconscionability. Here, the bargaining powers
4 of Plaintiff and Defendant are unequal in the sense that Lowe’s is a large corporation with far
5 more resources than Plaintiff. However, the power of Lowe’s is not as strong or one-sided as the
6 power of parties involved in other arbitration agreements or adhesion contracts. There are many
7 other home improvement stores and suppliers from which Plaintiff could have obtained the same
8 services. This is far from the unequal power dynamic when a prospective employee is particularly
9 beholden to the bargaining position of a prospective employer. *Little v. Auto Stiegler, Inc.*, 29 Cal.
10 4th 1064, 1071 (“[T]he economic pressure exerted by employers on all but the most sought-after
11 employees may be particularly acute, for the arbitration agreement stands between the employee
12 and necessary employment. . .”). Furthermore, the terms of the arbitration agreement in this
13 Contract are not substantively unconscionable. The arbitration terms provide that Lowe’s will pay
14 for the majority of the fees associated with the arbitration, both parties’ claims are subject to
15 arbitration, and there is no post-arbitration hearing. *Compare with, id.* at 1072 (listing examples of
16 substantively unconscionable terms). The terms of the arbitration agreement are no more
17 favorable to Lowe’s than they are to Plaintiff. Accordingly, the Court finds that the arbitration
18 agreement is not unconscionable.

19 **IT IS HEREBY ORDERED** that Defendants’ Motion to Compel Arbitration (Dkt. No. 7)
20 is GRANTED.

21 **IT IS HEREBY FURTHER ORDERED** that the matter is STAYED in this Court
22 pending the outcome of the arbitration. The parties shall update the Court as to the status of the
23 arbitration no more than 7 days after its resolution.

24 Dated: April 6, 2017.



25
26
27 MANUEL L. REAL
28 UNITED STATES DISTRICT JUDGE