UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 17-822 JVS (JDEx)	Date	September 11, 2017
Title	**Julianna Hallsted v. JPMorgan Chase & Co., et al**		

Present: The Honorable	James V. Selna
Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS)** **Order GRANTING Defendant's Motion Motion to Compel Arbitration**

The Court, having been informed by the parties in this action that they submit on the Court's tentative ruling previously issued, hereby GRANTS the Defendants' Motion to Compel Arbitration and Stay Action. The Court makes this ruling in accordance with the tentative ruling as follows:

Defendant JPMorgan Chase & Company ("JPMorgan Chase") moved to compel Plaintiff Julianna Hallsted ("Hallsted") to arbitrate her claims and stay this lawsuit pending the outcome of arbitration. (Mot., Docket No. 12.) Hallsted opposed. (Opp'n, Docket No. 13.) JPMorgan Chase replied. (Reply, Docket No. 14.)

For the following reasons, the Court **grants** JPMorgan Chase's motion to compel arbitration and stays the case pending arbitration.

I. Request for Judicial Notice

A court may take judicial notice of facts that are readily determinable from accurate sources. Fed. R. Evid. 201(b)(2). Judicial notice is appropriate for court proceedings, if those proceedings have a direct relation to the matter at issue. U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992).

Here, JPMorgan Chase filed a request for judicial notice. (RJN, Docket No. 12-5.) All of the requested documents concern relevant federal and state court proceedings. Therefore, the Court **grants** the request.

II. Background

This action arises from the employment relationship between Hallsted and JPMorgan Chase. (Compl., Docket No. 2.) When Hallsted began her employment with JPMorgan Chase, she received and signed an offer letter, which contained JPMorgan Chase's Arbitration Agreement ("Arbitration Agreement"). (Cochran Decl. Ex. A, Docket No. 12-4.) Hallsted's employment with JPMorgan Chase was contingent upon her signing the offer letter and the Arbitration Agreement. (Reply, Docket No. 14 at 2; Hallsted Decl., Docket No. 13-1 at 2.) The offer letter included the following acknowledgment directly below the signature block:

> I understand my employment is subject to my and JPMorgan Chase's agreement to submit employment-related disputes that cannot be resolved internally to binding arbitration, as set forth in the Binding Arbitration Agreement detailed below. By signing below I acknowledge and agree that I have read and understand the Binding Arbitration Agreement, have accepted its terms and understand that it is a condition of my employment with JPMorgan Chase.

(Cochran Decl. Ex. A, Docket No. 12-4 at 6.)

JPMorgan Chase's Arbitration Agreement followed directly below this acknowledgment paragraph. (Id.) The Arbitration Agreement's terms apply to Hallsted and JPMorgan Chase. (Id.) Subject to exceptions largely irrelevant to this case, the Arbitration Agreement covers "all legally protected employment-related claims . . . that [Hallsted] now [has] which arise out of or relate to [her] employment or separation from employment with JPMorgan Chase and all legally protected employment-related claims that JPMorgan Chase has or in the future may have against [Hallsted]." (Id.)

Hallsted filed this action in Orange County Superior Court in March 2017. (Compl., Docket No. 2.) The complaint asserts six causes of action: (1) failure to pay overtime wages, (2) one hour penalty wages for failure to provide meal and rest breaks, (3) forfeiture of vacation pay, (4) forfeiture of performance based incentive compensation, (5) violation of Labor Code §§ 432 and 1198.5, and (6)

waiting time penalties and interest. In May 2017, JPMorgan Chase removed the action to this Court. (Id.) JPMorgan Chase now seeks to compel arbitration of Hallsted's claims on an individual basis pursuant to the Arbitration Agreement. (Mot., Docket No. 12.)

III. Legal Standard

Under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq, a party to an arbitration agreement may bring a motion to compel arbitration in a federal district court. When determining whether to compel arbitration, a district court may not review the merits of the dispute. Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1119 (9th Cir. 2008). Instead, a district court is limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.[1] Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000). If a valid arbitration agreement exists, then a district court is required to enforce the arbitration agreement. Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012 (9th Cir. 2004).

Section 2 of the FAA provides that written agreements to arbitrate disputes arising out of transactions involving interstate commerce "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; Ticknor v. Choice Hotels Int'l, Inc., 265 F.3d 931, 936 (9th Cir. 2001). Under section 2, "state law, whether of legislative or judicial origin, is applicable if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally." Ticknor, 265 F.3d at 937 (quoting Perry v. Thomas, 482 U.S. 483, 492 n.9 (1987)) (internal quotation marks omitted). "Thus, generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2." Id. (quoting Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 687 (1996)) (internal quotation marks omitted). "[W]here a party specifically challenges arbitration provisions as unconscionable and hence invalid, whether the arbitration provisions are unconscionable is an issue for the court to determine, applying the relevant state contract law principles." Jackson v.

[1] Because Hallsted's suit is regarding her employment at JPMorgan Chase, the arbitration clause encompasses the dispute. (Compl., Docket No. 2.) The parties do not contest this point.

Rent-A-Center West, Inc., 581 F.3d 912, 918–19 (9th Cir. 2009), rev'd on other grounds, 561 U.S. 63 (2010).

IV. Discussion

Hallsted argues that the Court should not enforce the Arbitration Agreement because it is procedurally and substantively unconscionable. (Opp'n, Docket No. 13 at 4.)

In California, unconscionability has a procedural element and a substantive element. See Armendariz v. Found. Health Psychcare Servs., Inc., 24 Cal. 4th 83, 114 (2000). The former addresses the presentation and negotiation of the contract, and it focuses on "oppression" or "surprise" due to unequal bargaining power. Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev., 55 Cal. 4th 223, 246 (2012); Armendariz, 24 Cal. 4th at 114; Dotson v. Amgen, Inc., 181 Cal. App. 4th 975, 980 (2010). Substantive unconscionability, on the other hand, "focuses on the terms of the agreement and whether those terms are so one-sided as to shock the conscience." See Soltani v. Western & Southern Life Ins. Co., 258 F.3d 1038, 1043 (9th Cir. 2001) (quoting Kinney v. United Healthcare Servs., 70 Cal. App. 4th 1322, 1330 (1999)) (emphasis in original); see also Armendariz, 24 Cal. 4th at 114 (noting that substantive unconscionability is present if the contract terms are "overly harsh" or "one-sided").

While both procedural and substantive unconscionability are required to render a contract unenforceable, they do not need to be present in the same degree. Armendariz, 24 Cal. 4th at 114. The more substantively oppressive the terms are, the less evidence of procedural unconscionability is required to find that the contract is unenforceable, and vice versa. Id. Whether a contract or provision is unconscionable is a question of law. Flores v. Transamerica HomeFirst, Inc., 93 Cal. App. 4th 846, 851 (2001). The party challenging the arbitration agreement bears the burden of establishing unconscionability. Pinnacle, 55 Cal. 4th at 247.

A. Procedural Unconscionability

Procedural unconscionability concerns the manner in which the contract was negotiated. Ferguson v. Countrywide Credit Indus., Inc., 298 F.3d 778, 783 (9th

Cir. 2002); A&M Produce Co. v. FMC Corp., 135 Cal. App. 3d 473, 484 (1982). Thus, a court will examine (1) oppression and (2) surprise. Ferguson, 298 F.3d at 783; A&M Produce, 135 Cal. App. 3d at 484. "Oppression" addresses the weaker party's absence of choice and unequal bargaining power that results in "no real negotiation" and an absence of "meaningful choice." A&M Produce, 135 Cal. App. 3d at 486. "Surprise" focuses on (1) how clearly a party discloses its terms and (2) the reasonable expectations of the weaker party. Parada v. Superior Court, 176 Cal. App. 4th 1554, 1568 (2009).

Here, Hallsted argues that the Agreement is procedurally unconscionable because (1) it is a contract of adhesion, and (2) the Arbitration Agreement failed to attach the applicable American Arbitration Association ("AAA") rules. (Opp'n, Docket No. 13 at 4–5.)

a. Contract of Adhesion

First, Hallsted asserts that Arbitration Agreement is procedurally unconscionable because it is a contract of adhesion. (Opp'n, Docket No. 13 at 4–5.) As discussed above, Hallsted asserts that her employment at JPMorgan Chase was contingent upon her signing the Arbitration Agreement and that she had no opportunity to negotiate its terms. (Id.)

The context in which Hallsted claims she signed the Arbitration Agreement does entail procedural unconscionability. "An arbitration agreement that is an essential part of a 'take it or leave it' employment condition, without more, is procedurally unconscionable." Martinez v. Master Prot. Corp., 118 Cal. App. 4th 107, 114 (2004); see also Armendariz, 24 Cal. 4th at 115 ("In the case of preemployment arbitration contracts, . . . few employees are in a position to refuse a job because of an arbitration requirement."). Notably, many courts have found that the take-it or leave-it employment contract scenario only results in a minimal degree of procedural unconscionability. See, e.g., Collins v. Diamond Pet Food Processors of California, LLC, No. 2:13-cv-00113-MCE-KJN, 2013 WL 1791926, at *4 (E.D. Cal. Apr. 26, 2013); Miguel v. JPMorgan Chase Bank, N.A., No. CV 12-3308 PSG (PLAx), 2013 WL 452418, at *4 (C.D. Cal. Feb. 5, 2013); Saincome v. Truly Nolen of Am., Inc., No. 11-CV-825-JM (BGS), 2011 WL 3420604, at

*4–5, 10 (S.D. Cal. Aug. 3, 2011). Therefore, the fact that Hallsted signed the Arbitration Agreement as a condition of her employment does establish that the Agreement is to some degree procedurally unconscionable.

b. Failure to Attach AAA Rules

Second, Hallsted argues that the Arbitration Agreement is procedurally unconscionable because it indicates that the arbitration shall be governed by the rules of the AAA, yet fails to attach the relevant rules to the document signed by Hallsted. (Opp'n, Docket No. 13 at 5.)

Under California law, parties to an agreement can incorporate the terms of another document into the agreement by reference. Troyk v. Farmers Group, Inc., 171 Cal. App. 4th 1305, 1331 (2009); Wolschlager v. Fid. Nat. Title Ins. Co., 111 Cal. App. 4th 784, 790 (2003). "For the terms of another document to be incorporated into the document executed by the parties, the reference must be clear and unequivocal, the reference must be called to the attention of the other party and he must consent thereto, and the terms of the incorporated document must be known or easily available to the contracting parties." Collins, 2013 WL 1791926, at *5 (quoting Shaw v. Regents of Univ. of Cal., 58 Cal. App. 4th 44, 54 (1997)) (internal quotation marks omitted). Here, the Agreement clearly states that any arbitration will be conducted in conformity with the rules of the AAA. (Cochran Decl. Ex. A, Docket No. 12-4 at 8.) This is sufficiently clear and unambiguous to incorporate the AAA rules into the contract by reference. Furthermore, the AAA rules are readily available on the internet. (Id.) Therefore, the Court concludes that the Arbitration Agreement is not substantively unconscionable for failure to attach the AAA rules.

Hallsted has therefore made a showing of some procedural unconscionability based upon the adhesive nature of the contract. However, California law requires that Hallsted also make a showing of substantive unconscionability in order for the Agreement to be held unenforceable on unconscionability grounds. See Soltani, 258 F.3d at 1043; Armendariz, 24 Cal. 4th at 114. The Court now turns to the issue of substantive unconscionability.

B. Substantive Unconscionability

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided. A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be so one-sided as to 'shock the conscience.'" Pinnacle, 55 Cal. 4th at 246 (citations and quotations omitted).

Hallsted argues that the Arbitration Agreement is substantively unconscionable because (1) the Agreement lacks mutuality, (2) it fails to provide for adequate discovery, and (3) it waives her right to a jury trial.[2]

a. Mutuality

As noted by the California Supreme Court in Armendariz, an arbitration agreement's lack of mutuality can render the agreement substantively unconscionable. 24 Cal. 4th at 117–21. Lack of mutuality involves a one-sided agreement in which a party with superior bargaining power imposes limitations on the other party without accepting those limitations itself. Id. Furthermore, the Ninth Circuit has held that, "under California law, a contract to arbitrate between an employer and an employee . . . raises a rebuttable presumption of substantive unconscionability." Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1174 (9th Cir. 2003). This presumption applies "[u]nless the employer can demonstrate that the effect of [the] contract to arbitrate is bilateral . . . ." Id. All that is required under California law is a mere "modicum of bilaterality." Armendariz, 24 Cal.4th at 117; see also Ingle, 328 F.3d at 1173.

Here, it is clear that the Arbitration Agreement applies mutually to JPMorgan Chase and Hallsted. The scope of the Agreement covers all legally protected employment-related claims between JPMorgan Chase and Hallsted. (Cochran Decl. Ex. A, Docket No. 12-4 at 6.) The Agreement specifies that

[2] Additionally, Hallsted argues that the Agreement does not afford her the protections of California law because the Agreement fails specify that the "applicable law" to be used by the arbitrator is California law. (Opp'n, Docket No. 13 at 7–8.) The Court declines to address this argument because JPMorgan Chase does not contest that California law is the applicable law. (Reply, Docket No. 14 at 12.)

arbitration will be conducted before a neutral arbitrator of the AAA unless the parties otherwise mutually select an arbitrator. (Id. at 8.) These rules apply to both parties. Thus, there is not a lack of mutuality.

b. Improper Restriction on Discovery

Hallsted argues that the Arbitration Agreement is substantively unconscionable because it imposes an unfair restriction on discovery. (Opp'n, Docket No. 13 at 7–8.) Armendariz is clear that adequate discovery must be permitted to avoid a finding of unconscionability. See 24 Cal. 4th at 104. However, as JPMorgan Chase points out, the Arbitration Agreement expressly provides that "[d]iscovery requests and the provisions of discovery must be consistent with . . . general standards of due process, the Rules of AAA, and the expedited nature of arbitration." (Cochran Decl. Ex. A, Docket No. 12-4 at 10.) Additionally, the Agreement permits the arbitrator to alter the "scope of discovery as necessary or upon request of the Parties" and expand "the scope of discovery within his or her reasonable discretion." (Id.) "The case law is clear that if an arbitration agreement guarantees parties additional discovery as needed or necessary to sufficiently litigate their claims, as determined by the arbitrator, the discovery provision is adequate." Denton v. WorleyParsons Group, Inc., No. CV 14-9573 PSG (MRWx), 2015 WL 12746222, at *5 (C.D. Cal. Mar. 17, 2015); see also Ali v. JPMorgan Chase Bank, N.A., 647 Fed. Appx. 783, 786 (9th Cir. 2016) (finding arbitration agreement in which the discovery provisions could be "expanded or restricted in the arbitrator's 'reasonable discretion'" and which "require[d] discovery 'consistent with . . . general standards of due process [and] the Rules of AAA'" not substantively unconscionable). Thus, the Court concludes that the Arbitration Agreement does not improperly restrict discovery, and therefore, is not substantively unconscionable.

c. Jury Trial Waiver

Furthermore, Hallsted argues that the Agreement is substantively unconscionable because it impliedly waives her right to a jury trial. (Opp'n, Docket No. 13 at 7.) "Persons entering into arbitration agreements know and intend that disputes arising under such agreements will be resolved by arbitration, not by juries; neither decision nor policy calls for an explicit waiver of the parties'

right to jury trial." Madden v. Kaiser Foundation Hospitals, 17 Cal. 3d 699, 703 (1976); see also Borgarding v. JPMorgan Chase Bank, No. CV 16-2485 FMO (RAOx), 2016 WL 8904413, at *4 (C.D. Cal. Oct. 31, 2016) ("It is well-settled that an arbitration agreement does not need to contain an express waiver of the right to a jury trial."). Therefore, the Court concludes that the Arbitration Agreement is not substantively unconscionable for impliedly waiving the right to a jury trial.

C. The Court Stays the Action Pending Arbitration

The Ninth Circuit has held that "a district court may either stay the action or dismiss it outright when, as here, the court determines that all of the claims raised in the action are subject to arbitration." Johnmohammadi v. Bloomingdale's, Inc., 755 F.3d 1072, 1074 (9th Cir. 2014). There is a strong "preference for staying an action pending arbitration rather than dismissing it." MediVas, LLC v. Marubeni Corp., 741 F.3d 4, 9 (9th Cir. 2014). In addition, the FAA states the following:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3 (emphasis supplied). Accordingly, the Court stays the case.

V. Conclusion

For the foregoing reasons, the Court **grants** JPMorgan Chase's motion to compel arbitration and **stays** the action in the Court. JPMorgan Chase's request that the Court stay its obligation to respond to any discovery until it rules on the motion to compel is **denied** as moot.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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