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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-6870 PSG (PJWx)	Date	November 20, 2017
Title	Donald Gray v. Petrossian, Inc. et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order GRANTING Defendants' petition for order compelling arbitration

Before the Court is a petition for order compelling arbitration filed by Defendants Petrossian, Inc., LS & Partners @ CA, LLC, and LS and Partners at LAX, LLC ("Defendants"). *See* Dkt. # 16 ("*Pet.*"). Plaintiff Donald Gray ("Plaintiff") opposes the motion, *see* Dkt. # 25 ("*Opp.*"), and Defendants timely replied, *see* Dkt. # 26 ("*Reply*"). The Court held a hearing in this matter on November 20, 2017. Having considered the moving papers and oral arguments, the Court **GRANTS** Defendants' petition.

I. Background

Plaintiff alleges that, when he was employed by Defendants as a cook between September 2013 and May 2015, he was denied compensation owed to him under the California Labor Code and was wrongfully terminated in retaliation for complaints he made about health code violations. *See Opp.* 1:2–11; *see also Complaint*, Dkt. # 2-1 ("*Compl.*"). After his employment ended, Plaintiff filed this action against Defendants and joint employer Defendant Star Concessions in Los Angeles County Superior Court, setting forth various violations of the California Labor Code and the California Business & Professions Code. *See Opp.* 1:11–22; *Compl.* ¶¶ 24–65. Defendants removed the case to this court on September 18, 2017, on the ground of complete preemption. *See* Dkt. # 1.

A. Collective Bargaining Agreement

Defendants assert, and Plaintiff does not dispute, that his employment was governed by a Collective Bargaining Agreement ("the CBA") between Unite Here Local 11 and Defendant LS & Partners @ CA, LLC. *See Declaration of Mollie Standridge*, Dkt. # 17 ("*Standridge Decl.*"), ¶ 3, Ex. 1 ("*CBA*"). The CBA required that "[a]ll grievances"—which includes "any claim or dispute . . . between the Employer and any employee"—"must be filed and processed in

accordance with the [] exclusive procedure." *Id.* ¶¶ 10.1–2. This "exclusive procedure" consists of three steps. The first step is a meeting between the employee and his supervisor at which the employee can request the presence of a union representative. *See id.* ¶ 10.2. If this meeting does not resolve the grievance, then step two requires a meeting between the employer's general manager and a union representative. *See id.* If necessary, a meeting between the human resources director, the union representative, and the grievant constitutes step three. *See id.* If these three steps do not resolve the grievance, then mediation may be pursued. *See id.* ¶ 10.3.

If the grievance is not resolved through the exclusive procedure or mediation, then "the Union or the Employer may submit the issue, in writing, to final and binding arbitration." *Id.* ¶ 11.2. The CBA's arbitration provision requires that (1) the arbitrator be from the Federal Mediation and Conciliation Service ("FMCS") and also be a member of the National Academy of Arbitrators, *see id.*; (2) compensation and expenses relating to the arbitration "be borne equally by the Employer and the Union," *id.* ¶ 11.4; and (3) the decision of the arbitrator be rendered within seven days for an expedited arbitration or thirty days for any other arbitration, *see id.* ¶¶ 11.5–6.

B. Plaintiff's Proceedings

In May 2015, Plaintiff's union, Unite Here Local 11, initiated a grievance on his behalf, alleging a violation of the CBA in relation to the conduct that ultimately led to his termination. *See Standridge Decl.*, ¶ 8, Ex. 3. Although the union requested a meeting to resolve the issue, *see id.*, it later withdrew the grievance based "entirely on the merit of it and its non-precedent setting nature for any other cases." *Id.* ¶ 9, Ex. 4. Thereafter, Defendants assert that Plaintiff did not request that the grievance be arbitrated. *See Pet.* 3:27.

In response to Plaintiff's initiation of this action, Defendants filed their petition after sending a letter to Plaintiff requesting that he stipulate to arbitration pursuant to the CBA. *See id.* 4:12–13; *Declaration of Gina Haggerty Lindell*, Dkt. # 18 ("*Lindell Decl.*"), ¶ 3, Ex. 6. Defendants report that Plaintiff has not responded to this request. *See Pet.* 4:14–15; *Lindell Decl.* ¶ 3.

II. Legal Standard

"The 'principal purpose' of the FAA [Federal Arbitration Act] is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (quoting *Volt Info. Scis., Inc. v. Board of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)). The FAA states that written arbitration

agreements "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.

The FAA allows "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration [to] petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. "Because the FAA mandates that 'district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed[,]' the FAA limits courts' involvement to 'determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.'" *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)) (emphasis in original). When deciding whether a valid arbitration agreement exists, courts generally apply "ordinary state-law principles that govern the formation of contracts." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). Any doubts about the scope of arbitrable issues must be resolved in favor of arbitration. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

If an arbitration agreement exists and covers the dispute at issue, § 4 of the FAA "requires courts to compel arbitration in accordance with the terms of the agreement." *Concepcion*, 563 U.S. at 344 (internal quotation marks omitted).

III. Discussion

To compel arbitration of Plaintiff's claims, Defendants must demonstrate that (1) an arbitration agreement exists, (2) the agreement contemplates arbitration of this dispute, and (3) the agreement is valid and enforceable. *See Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004). The parties do not dispute the existence of the CBA or the arbitration clause it contains, and so the Court will first consider the scope of the agreement before determining its enforceability.

A. Scope

In general, district courts must expansively interpret arbitration agreements, especially when the clause itself is written in broad terms. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 914 (9th Cir. 1993) (quoting *Volt Info. Scis.*, 489 U.S. at 476) ("[D]ue regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself [must be] resolved in favor of arbitration.") (alteration in original); *Peerless Imps., Inc. v. Wine, Liquor & Distillery Workers Union Local One*, 903 F.2d 924, 927

(2d Cir. 1990) ("Where the arbitration clause is broad, we have directed courts to compel arbitration whenever a party has asserted a claim, however frivolous, that on its face is governed by the contract."). The CBA at issue here contains such broad language. It requires that "[a]ll grievances be filed and processed in accordance with the" arbitration procedure, *CBA* ¶ 10.2, and broadly defines a "grievance" as "any claim or dispute between the Employer and the Union or between the Employer and any employee which involves interpretation, application or enforcement of this Agreement." *Id.* ¶ 10.1. Furthermore, the Court agrees with Defendants that Plaintiff's specific causes of actions are each governed by specific sections of the CBA, thus putting them within the ambit of the arbitration provision. *See Pet.* 7:21–8:24. Plaintiff brings claims for wrongful termination in violation of public policy, *see Compl.* ¶¶ 24–32, retaliation in violation of public policy, *see id.* ¶¶ 33–38, violations of California wage and hour laws, *see id.* ¶¶ 39–59, and violation of California's Unfair Competition Law ("UCL"), *see id.* ¶¶ 60–65.[1] Termination and discipline, which form the basis of the wrongful termination and retaliation claims, are covered by the CBA. *See CBA* ¶¶ 23.1–8. As for wages and hours, these too are included in the CBA, along with the assertion that "Employer will comply with wage and hour laws with regard to breaks and meal periods." *Id.* ¶¶ 5.1–12. Accordingly, the Court concludes that Plaintiff's claims in this action are within the scope of the CBA and, hence, its arbitration provision.

In opposition, Plaintiff contends that "[t]he presumption in favor of arbitration does not apply where employees who are subject to a CBA bring suit for statutory violations." *Opp.* 8:19–21. The United States Supreme Court, however, has held that the "duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights," *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987), even when "claims aris[e] under a statute designed to further important social policies." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 90 (2000). Furthermore, the Supreme Court has specifically held that causes of action arising under California employment statutes are subject to arbitration agreements. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122–23 (2001). Therefore, the CBA can compel arbitration of Plaintiff's statutory claims.

Plaintiff also argues that a CBA "may only compel arbitration of a statutory claim if it is clear and unmistakable, in [an] explicit waiver, that the parties intend to waive their right to proceed in a judicial forum for statutory claims." *Opp.* 8:14–19. However, the waiver requirement extends not to *all* statutory claims, but rather to discrimination claims that "ultimately concern[] not the application or interpretation of any CBA, but the meaning of a

[1] Plaintiff's UCL claim is premised on violation of wage and hour laws. *See Compl.* ¶ 61 (specifying that Plaintiff's injuries under the UCL consist of "violat[ions of] California Health and Safety Codes and State wage and hour laws and the Industrial Welfare Commission's Wage Orders governing payment of wages to employees").

federal statute." *Wright v. Universal Mar. Serv. Corp.*, 525 U.S. 70, 78–79 (1998); *see also id.* at 79 ("The cause of action Wright asserts arises not out of contract, but out of the [Americans with Disabilities Act], and is distinct from any right conferred by the collective-bargaining agreement."). Here, Plaintiff's claims are within the scope of the CBA and do not raise any discrimination claims. Therefore, no explicit waiver is necessary.

In summation, the Court finds that Plaintiff's claims are within the scope of the CBA's arbitration agreement.

B. Validity and Enforceability

i. General Enforceability

In general, the Supreme Court has held that arbitration clauses in collective bargaining agreements and other employment contracts should be enforced. *See, e.g.*, *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 274 (2009) ("We hold that a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate ADEA claims is enforceable as a matter of federal law."); *Circuit City Stores*, 532 U.S. at 123 ("We have been clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context."). This follows the Supreme Court's dictate that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24. Accordingly, the Court agrees with Defendants that "an agreement to arbitrate exists between Plaintiff, through the CBA, and [Defendants]" and that "the CBA is enforceable by law, warranting compulsion of Plaintiff's claims accordingly." *Pet.* 6:1–4.

ii. Unconscionability

In opposition, Plaintiff argues that the arbitration provision is unconscionable. *See Opp.* 17:11–19:9. In California, "unconscionability has both a procedural and a substantive element, the former focusing on undue oppression or surprise due to unequal bargaining power, the latter on overly-harsh or one-sided results." *Armendariz v. Foundation Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 114 (2000) (internal quotation marks omitted). Plaintiff does not appear to challenge the agreement on the ground of procedural unconscionability and instead focuses on the substance of the provision.

He first argues that, because the arbitration provision of the CBA "only provides a mechanism for the Employer and the Union to elect that a dispute be submitted to arbitration," the CBA is therefore "one-sided and unconscionable in entirely denying the employee the right

to elect to arbitrate a grievance, and effectively, denying the employee the right to recourse." *Opp.* 17:15–26. However, the Court agrees with Defendants that Plaintiff mischaracterizes the CBA. In addition to envisioning disputes "between the Employer and any employee," the various steps in the arbitration procedure outlined in Part I above include the participation of the grievant. *CBA* ¶ 10.1–2. As Defendants correctly conclude, "at all steps in the process, the union and the employee work in tandem to resolve the grievance with the employer." *Reply* 9:16–17. That Plaintiff here did not fully engage with this process—as Defendants note, "[t]here is no indication that Plaintiff made any effort to further pursue this grievance regarding his suspension once it was withdrawn," *id.* 10:1–2—does not change the fact that the CBA provided him with opportunities to engage in the arbitration procedure on his own behalf.

Plaintiff also contends that the CBA's arbitration clause "fails to meet the minimal standards for mandatory employment arbitration agreements in California." *Opp.* 18:1–2. In *Armendariz*, the California Supreme Court outlined the minimum provisions required for an arbitration agreement to be valid with respect to statutory employment claims. Such an agreement is lawful if it: "(1) provides for neutral arbitrators, (2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum." *Armendariz*, 24 Cal. 4th at 102 (quoting *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1482 (D.C. Cir. 1997)).[2] Although Plaintiff challenges the CBA's satisfaction of only the second and fourth requirements, *see Opp.* 18:21–19:9, the Court will consider all five.

a. Neutral Arbitrator

The Court agrees with Defendants that the CBA's process for selecting an arbitrator—requiring that the parties first request a panel of potential arbitrators from the FMCS and then jointly participate in the final selection, *see CBA* ¶ 11.2—"provides for an impartial arbitrator and meets the first prong of *Armendariz*." *Reply* 11:4–21.

b. Discovery

Plaintiff argues that "the arbitration provisions of the [CBA] do not provide for any discovery, and . . . the arbitrator has no power to authorize discovery." *Opp.* 18:22–27. However, Defendants correctly note that "[t]here is no language in the CBA or the arbitration that restricts or curtails discovery during arbitration," *Reply* 11:24–26—in other words, the CBA is silent, and "that silence does not amount to a limitation." *Slattery v. Killer Shrimp, Inc.*, No.

[2] The inquiries under the FAA and the California Arbitration Act are the same. *See Cleveland v. Oracle Corp.*, No. C 06-7826 MHP, 2007 WL 915414, at *3 (N.D. Cal. Mar. 23, 2007).

CV 15-04116-AB (AJWx), 2015 WL 12781049, at *3 (C.D. Cal. Oct. 1, 2015); *see also Armendariz*, 24 Cal. 4th at 106 (inferring that "when parties agree to arbitrate statutory claims, they also implicitly agree, absent express language to the contrary, to such procedures as are necessary to vindicate that claim"). California law prescribes a default that complies with *Armendariz*: "After the appointment of the arbitrator or arbitrators, the parties to the arbitration shall have the right to take depositions and to obtain discovery regarding the subject matter of the arbitration . . . as if the subject matter of the arbitration were pending before a superior court of this state in a civil action." Cal. Civ. Proc. Code § 1283.05(a). Because the CBA is silent on discovery, this default applies, allowing Plaintiff "to conduct whatever discovery is necessary to vindicate [his] claims." *Slattery*, 2015 WL 12781049, at *3. Therefore, the second requirement of *Armendariz* is satisfied.

c. Written Award

The CBA requires that the arbitrator render a written decision, *see CBA* ¶ 11.5, and so this third element is met.

d. All Types of Relief

Plaintiff concludes that this requirement is not satisfied because the CBA does "not state what relief, if any, the arbitrator has power to award." *Opp.* 19:2–4. However, the specific requirement mandated by *Armendariz* is that the agreement "may not *limit* statutorily imposed remedies." *Armendariz*, 24 Cal. 4th at 103 (emphasis added); *see also Slattery*, 2015 WL 12781049, at *4. Nothing in the CBA explicitly limits the relief available to the grievant. Therefore, the fourth requirement is satisfied.

e. Costs

The CBA specifies that "[c]ompensation and expenses of the neutral arbitrator and expenses associated with requesting panels from the FMCS shall be borne equally by the Employer and the Union." *CBA* ¶ 11.4. Given that *Armendariz* prohibits "any arbitrators' fees or expenses as a condition of access to the arbitration forum," *Armendariz*, 24 Cal. 4th at 102, the Court is somewhat troubled by this provision because Plaintiff was a member of Unite Here and paid dues to the union. *See Standridge Decl.* Ex. 2. Despite this apprehension, the Court is convinced that the concerns that animated the *Armendariz* court are not present here. The agreement at issue in that case was one of adhesion, which "was imposed on employees as a condition of employment [with] no opportunity to negotiate." *Armendariz*, 24 Cal. 4th at 115. Here, by contrast, the CBA was a product of collective bargaining between Defendants and Unite Here. *See Defendants' Supplemental Briefing*, Dkt. # 28, 3:2–8. This distinction,

combined with the fact that it is ultimately a union to which Plaintiff no longer belongs and not Plaintiff himself who will be contributing to the arbitration fees, *see id.* 3:17–4:5, persuades the Court that the cost allocation in the CBA does not render this arbitration agreement unconscionable.

The Court therefore concludes that the arbitration clause contained in the CBA is both valid and enforceable. Because Plaintiff's claims are contained within its scope, the Court concludes that arbitration is required.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Defendants' petition for order compelling arbitration.

IT IS SO ORDERED.