UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 19-0021-JGB(SHKx)**	Date	March 5, 2019
Title	***John Snow v. ADT, LLC, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) DENYING Defendant ADT, LLC's Motion to Compel Arbitration (Dkt. No. 10); and (2) VACATING the March 11, 2019 Hearing (IN CHAMBERS)**

Before the Court is Defendant ADT, LLC's ("Defendant" or "ADT") Motion to Compel Arbitration. ("Motion," Dkt. No. 10-1.) The Court finds this matter suitable for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering all papers filed in support of and in opposition to the Motion, the Court DENIES Defendant's Motion and VACATES the March 11, 2019 hearing.

I. BACKGROUND

On January 4, 2019, Plaintiff John Snow ("Plaintiff") filed his Complaint against ADT. ("Complaint," Dkt. No. 1.) The Complaint alleges ten causes of action: (1) failure to pay overtime compensation; (2) failure to provide compliant wage statements; (3) failure to pay timely earned wages; (4) failure to pay California minimum wage; (5) failure to reimburse business expenses; (6) unfair competition practices; (7) retaliation for engaging in the rights of an employee; (8) retaliation for reporting illegal activity; (9) recovery of penalties pursuant to the Private Attorneys General Act ("PAGA"); and (10) age discrimination. (Id.)

Plaintiff alleges he was employed by ADT as a sales representative and misclassified as an "exempt" employee from applicable Wage Orders. (Id. ¶¶ 41-42.) Plaintiff alleges that since he began his employment, he has spent less than 51% of his working hours engaged in the duties of actively selling to customers and has spent more than 51% of his working hours at his regular place of business. (Id. ¶ 43.) He alleges he has not been paid minimum wage for all hours worked

and has not been paid overtime wages for hours worked in excess of eight hours per day or forty hours per week. (Id. ¶ 44.) Plaintiff contends that during pay periods in which his commission did not represent a total equaling at least California minimum wage, his paycheck failed to include all wages owed for the identified pay period. (Id. ¶ 46.) Plaintiff alleges similarly situated employees also suffered these violations. (Id. ¶¶ 47-49.) Plaintiff further alleges ADT failed to reimburse him for work-required expenses and that ADT retaliated against him in the form of an unfavorable transfer after he requested these reimbursements. (Id. ¶¶ 55-59.) Plaintiff is 72 and believes this transfer, and other unfavorable transfers, were made on the basis of his age. (Id. ¶¶ 66-67.) Plaintiff also brings a PAGA action on behalf of other aggrieved employees for the labor code violations he alleges. (Id. ¶¶ 77-79.)

ADT filed this Motion on January 31, 2019. (Mot.) Plaintiff opposed the Motion on February 11, 2019.[1] ("Opposition," Dkt. No. 12.) ADT replied on February 15, 2019. ("Reply," Dkt. No. 13.)

II. LEGAL STANDARD

The Federal Arbitration Act (the "FAA") provides that contractual 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 establishes a general policy favoring arbitration agreements. AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011); Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1119 (9th Cir. 2008) ("Section 2 of the FAA creates a policy favoring enforcement of agreements to arbitrate.") Its principal purpose is to "ensure that private arbitration agreements are enforced according to their terms." Concepcion, 563 U.S. at 334 (citing Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ., 489 U.S. 468 (1989) (internal quotation marks omitted)). "Arbitration is a matter of contract, and the [FAA] requires courts to honor parties' expectations." Id. at 351.

Under the FAA, "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such an arbitration proceed in the manner provided for in [the arbitration] agreement." 9 U.S.C. § 4. Upon a showing that a party has failed to comply with a valid arbitration agreement, the district court must issue an order compelling arbitration. Id. If such a showing is made, the district court shall also stay the proceedings pending resolution of the arbitration at the request of one of the parties bound to arbitrate. Id. § 3. To determine whether to compel arbitration, a district court's involvement 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." Cox, 533 F.3d at 1119 (quoting Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)). A party seeking to compel arbitration under the FAA bears the burden of making this showing. Id.

[1] Plaintiff requests that the Court deny ADT's motion because ADT, although complying with the formalities of Local Rule 7-3, did not meaningfully engage in the meet and confer obligation. (Opp'n at 1-3.) The Court will not deny the Motion on this ground.

III. DISCUSSION

ADT moves this Court for an order compelling Plaintiff to arbitrate his claims and staying this action pending resolution of the requested arbitration proceedings. ADT fails to carry its burden show that a valid agreement to arbitrate exists.

"Arbitration is a product of contract. Parties are not required to arbitrate their disagreements unless they have agreed to do so." Davis v. Nordstrom, Inc., 755 F.3d 1089, 1092 (9th Cir. 2014) (citing Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (U.S.), LLC, 55 Cal. 4th 223, 226 (2012)). In determining whether a valid contract to arbitrate exists, a court applies state law principles of contract formation. Id. at 1093 (citing Ferguson v. Countrywide Credit Indus., Inc., 298 F.3d 778, 782 (9th Cir. 2002)). Under California law, a court will not infer a contract to arbitrate absent a "clear agreement," which may be either express or implied in fact. Id. at 1092-93 (citing Avery v. Integrated Healthcare Holdings, Inc., 218 Cal. App. 4th 50, 59 (2013); Pinnacle Mkt. Dev., 55 Cal. 4th at 236). "[The] principle of knowing consent applies with particular force to provisions for arbitration," meaning that "an offeree, regardless of apparent manifestation of his consent, is not bound by . . . contractual provisions of which he was unaware[.]" Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014) (quoting Windsor Mills, Inc. v. Collins & Aikman Corp., 25 Cal. App. 3d 987, 993 (1972)).

ADT contends that Plaintiff's failure to opt-out of the arbitration provision and his continued employment with ADT manifested his agreement to the arbitration terms. (Mot. at 9.) The Court acknowledges that continuing employment may be sufficient to manifest implied-in-fact assent to an arbitration agreement. See, e.g., Craig v. Brown & Root, Inc., 84 Cal. App. 4th 416, 420-22 (2000); Davis, 755 F.3d at 1093-94. However, the fact that Plaintiff continued his employment is meaningless if he never received notice of the arbitration policy and its opt-out provision. To find otherwise would vitiate the principle of knowing consent in forming contracts.

ADT contends Plaintiff received notice of the arbitration policy and the opt-out provision. (Mot. at 6-7.) In January of 2016, ADT began implementing its arbitration policy. ("Carpenter Declaration," Dkt. No. 10-4 ¶ 3.) The arbitration policy was distributed through the following efforts: (1) mandatory meetings with employees; (2) email to company email addresses; and (3) mail to the homes of current employees. (Id. ¶¶ 3, 8-10.) ADT contracted ILYM to distribute specially compiled arbitration packets to all current ADT employees with included a cover letter, the arbitration policy, and a frequently asked questions document. (Id. ¶ 4; "Molina Declaration," Dkt. No. 10-2 ¶ 3.) ADT proved ILYM with the mailing addresses of current employees to receive the arbitration packet, and ILYM mailed the arbitration packets on January 20, 2016. (Carpenter Decl. ¶ 5; Molina Decl. ¶ 6.) Plaintiff was included in the list of employees with a mailing address matching the one used for his paycheck stubs, W-2 forms, and other employment-related documents. (Carpenter Decl. ¶ 6.) Of the arbitration packets ILYM sent, only 25 were returned and only 18 remained undeliverable. (Molina Decl. ¶ 7.) Plaintiff's arbitration packet was never returned to ILYM. (Id.)

However, the Court is unpersuaded that Plaintiff actually received any copy of the arbitration policy. First, ADT acknowledges Plaintiff was on a leave of absence when the mandatory meetings explaining the arbitration policies occurred. (Carpenter Decl. ¶ 8.) Plaintiff's leave commenced on his date of hire, November 17, 2015, and lasted through February 18, 2016. ("Snow Declaration," Dkt. No. 12-2 ¶ 4; "Ex. A," Dkt. No. 12-2; "Ex. B," Dkt. No. 12-2.) Thus, Plaintiff could not have received this notice. Second, ADT asserts it sent an email to Plaintiff's company email address containing the arbitration packet in January 2016. (Carpenter Decl. ¶ 10.) Plaintiff was on leave during this time. As a condition of his leave, Plaintiff was prohibited from conducting work-related activities for ADT and prohibited from accessing work emails. (Snow Decl. ¶ 5.) Furthermore, Plaintiff attests that he did not receive log-in credentials for his work email until February 23, 2016. (Id. ¶ 6.) After reading ADT's Motion, Plaintiff searched his work email account, and the earliest email he could locate from ADT was dated February 23, 2016. (Id. ¶ 7.) ADT's Reply does not respond to Plaintiff's assertions that he never received email notice. Based on this evidence, the Court finds that Plaintiff did not receive email notice of the arbitration policy.

Because the Court finds Plaintiff did not receive the arbitration packet through the in-person meetings or via company email, the only way he could have received any notice of the arbitration packet was via mail. ADT does not provide sufficient evidence to establish that Plaintiff received the arbitration packet via mail, and Plaintiff denies such receipt under penalty of perjury. (Id. ¶ 8.) ADT asserts that because Plaintiff denies he received the packet, the Court must "weigh the denial of the receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received." (Reply at 2 (quoting Craig, 84 Cal. App. 4th at 421-22).) ADT asserts their mailing efforts outlined above outweigh what it believes to be a self-serving denial. (Reply at 3.) The Court does not agree. ADT's evidence establishes they mailed the arbitration packet to Plaintiff but does not establish that Plaintiff actually received it. For example, ADT did not provide evidence that Plaintiff signed for the envelope, nor did it offer any other proof of delivery. ADT only asserts that the envelope was not returned to ILYM. The Court finds this insufficient to overcome Plaintiff's assertion under penalty of perjury that he never received the arbitration packet. Thus, the Court finds Plaintiff did not receive the arbitration packet containing the arbitration policy.

Because the Court finds ADT's arbitration packet did not reach Plaintiff through any of the three modes of distribution, Plaintiff's continued employment cannot be interpreted as his agreement to the terms of the arbitration policy. Accordingly, ADT fails to carry its burden of showing that a valid arbitration agreement exists.

IV. CONCLUSION

For the reasons above, the Court DENIES Defendant's Motion aand VACATES the March 11, 2019 hearing.

IT IS SO ORDERED.