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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ebone Leroy East,
10 Plaintiff,

11 v.

12 CD Baby Incorporated, et al.,
13 Defendants.
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No. CV-19-00168-PHX-GMS

ORDER

15 Pending before the Court is Plaintiff Ebone Leroy East's Motion for Preliminary
16 Injunction (Doc. 13) and Motion for Default Judgment (Doc. 19), as well as Defendant's
17 Motion to Dismiss for lack of jurisdiction (Doc. 14). Because a valid arbitration agreement
18 exists between Plaintiff and Defendants, the Court will dismiss the lawsuit.

19 **BACKGROUND**

20 In May 2012, Plaintiff Ebone East entered into an agreement with CD Baby, Inc. to
21 distribute and sell his album, *King of Terror*. (Doc. 14, Ex. 1 ¶ 3). Mr. East previously
22 entered into a similar agreement with CD Baby to distribute his 2006 album, *Block Runnas*
23 *The Mix Tape*. (*Id.* ¶ 4).

24 Plaintiff commenced this action earlier this year by filing a complaint against CD
25 Baby and various other corporate entities. (Doc. 1). In his complaint, he alleges that CD
26 Baby fraudulently and negligently misrepresented the terms of their agreement, and that he
27 is entitled to a large percentage of the total sales of his music through CD Baby. He seeks
28 100 million dollars in damages. But because Mr. East signed a valid arbitration agreement

1 with CD Baby that encompasses this dispute at issue here, the Court must dismiss this
2 lawsuit.

3 DISCUSSION

4 I. Arbitration

5 The Federal Arbitration Act (“FAA”) broadly provides that written agreements to
6 arbitrate disputes arising out of transactions involving interstate commerce “shall be valid,
7 irrevocable, and enforceable” except upon grounds that exist at common law for the
8 revocation of a contract. 9 U.S.C. § 2. Absent a valid contract defense, the FAA “leaves
9 no place for the exercise of discretion by a district court, but instead mandates that district
10 courts shall direct the parties to proceed to arbitration on issues as to which an arbitration
11 agreement has been signed.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126,
12 1130 (9th Cir. 2000). The district court’s role under the FAA is “limited to determining
13 (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement
14 encompasses the dispute at issue.” *Id.*

15 The Agreement between Mr. East and CD Baby encompasses the dispute at issue in
16 this case. The Agreement provides that “You and CD Baby . . . agree to arbitration . . . as
17 the exclusive form of dispute resolution . . . for all disputes and claims arising out of or
18 relating to this agreement or your use of the services.” (Doc. 14, Ex. A, ¶ 19). The
19 Agreement also provides that “[a]ll claims that you bring against CD Baby must be
20 resolved in accordance with this Dispute Resolution section.” (*Id.*).

21 Under the FAA’s savings clause, “state law that arose to govern issues concerning
22 the validity, revocability, and enforceability of contracts generally remains applicable to
23 arbitration agreements.” *Kilgore v. KeyBank Nat. Ass’n*, 718 F.3d 1052, 1058 (9th Cir.
24 2013). “Thus, generally applicable contract defenses, such as fraud, duress, or
25 unconscionability, may be applied to invalidate arbitration agreements without
26 contravening § 2.” *Id.* California substantive law applies according to the terms of the
27 Agreement. (Doc. 14-1 at 14).

28 Plaintiff argues that enforcing the agreement to arbitrate against him would be

1 unconscionable, because it was an adhesion contract and Plaintiff had no reasonable
2 opportunity to negotiate.¹ Under California law, “a contract or clause is unenforceable if
3 it is both procedurally and substantively unconscionable.” *Ting v. AT&T*, 319 F.3d 1126
4 1147 (9th Cir. 2003). “To establish procedural unconscionability, Plaintiff must
5 demonstrate that he was surprised by some aspect of the agreement, or that his consent to
6 its terms was obtained under coercion or duress.” *Lang v. Skytap, Inc.*, 347 F. Supp. 3d
7 420, 427 (N.D. Cal 2018). And to establish substantive unconscionability, Plaintiff must
8 demonstrate that the contract term is “unduly harsh, oppressive, or one-sided.” *Sanchez v.*
9 *Carmax Auto Superstores Ca., LLC*, 224 Cal. App. 4th 398, 403 (2014). That an agreement
10 was offered on a take-it-or-leave-it basis does not alone establish procedural
11 unconscionability. *Lang*, 347 F. Supp. 3d at 428. Rather, “[o]nly when [the agreement’s]
12 provisions are unfair does it become unenforceable.” *Dotson v. Amgen Inc.*, 181 Cal. App.
13 4th 975, (2010). Because Plaintiff does not claim that he was surprised by the agreement,
14 or that he was “lied to, placed under duress, or otherwise manipulated into signing the
15 arbitration agreement,” there is minimal procedural unconscionability. *Baltazar v. Forever*
16 *21, Inc.*, 62 Cal. 4th 1237, 1245, (2016) (finding minimal procedural unconscionability
17 where contract of adhesion but no surprise, coercion or duress). And because Plaintiff does
18 not challenge any specific aspect of the arbitration agreement as unfair, unduly harsh, or
19 surprising, he has failed to establish unconscionability. *See Sanchez*, 224 Cal. App. 4th at
20 402–03.

21 CONCLUSION

22 The Agreement at issue in this case requires that this dispute between Plaintiff and
23 Defendants be resolved by an arbitration panel. The Court must therefore dismiss the
24 complaint.

25 _____
26 ¹ Plaintiff further argues that the amount of damages he is seeking exceeds the permissible
27 amount for arbitration proceedings. This argument lacks merit. Plaintiff mistakenly reads
28 state laws which *require* arbitration for disputes *below* a certain amount in controversy to
mean that there is an upper limit for arbitration proceedings. Plaintiff does not point to any
laws that establish an upper limit for damages in arbitration proceedings. Absent language
in the Agreement that establishes a monetary threshold for arbitration, the agreement to
arbitrate is valid.

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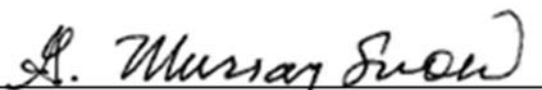
IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss for lack of jurisdiction (Doc. 14) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for a Preliminary Injunction (Doc. 13) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Default Judgment (Doc. 19) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the Clerk of Court is directed to terminate this action.

Dated this 7th day of June, 2019.



G. Murray Snow
Chief United States District Judge