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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMIAN LANGERE, on behalf of)	Case No. CV 15-00191 DDP (AJWx)
himself and others similarly)	
situated,)	
Plaintiff,)	ORDER GRANTING DEFENDANT'S MOTION
v.)	TO COMPEL ARBITRATION
VERIZON WIRELESS SERVICES,)	
LLC,)	[Dkt. 12, 29 and 37]
Defendants.)	

Presently before the court is Defendant Verizon Wireless Services, LLC ("Verizon")'s Motion to Compel Arbitration. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

I. Background

Plaintiff activated a wireless service account with Defendant Verizon June 6, 2011. (Citizen Decl., Ex. 1.) He electronically signed a sales receipt containing the the following statement:

I AGREE TO THE CURRENT VERIZON WIRELESS CUSTOMER AGREEMENT (CA), INCLUDING THE CALLING PLAN, (WITH EXTENDED LIMITED WARRANTY/SERVICE CONTRACT, IF APPLICABLE), AND OTHER TERMS AND CONDITIONS FOR SERVICES AND SELECTED FEATURES I HAVE AGREED TO PURCHASE AS REFLECTED ON THE RECEIPT, AND WHICH

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1 HAVE BEEN PRESENTED TO ME BY THE SALES REP. AND WHICH I HAD
2 THE OPPORTUNITY TO REVIEW. I UNDERSTAND THAT I AM AGREEING
3 TO . . . SETTLEMENT OF DISPUTES BY ARBITRATION AND OTHER
MEANS INSTEAD OF JURY TRIALS AND OTHER IMPORTANT TERMS IN
THE CA.

4 (Citizen Decl., Ex. 1 at 8.) Plaintiff states that the information
5 was not explained to him and the receipt was "densely-worded,
6 written in small font, and was difficult to read." (Langere Decl.
7 ¶¶ 2-3.)

8 Plaintiff was also given a document entitled "Your Guide,"
9 which contained the full Customer Agreement ("2011 Customer
10 Agreement") referenced in the sales receipt, including an
11 Arbitration Agreement. (Citizen Decl. ¶ 5; Citizen Decl., Ex. 2.)
12 The Arbitration Agreement in the 2011 Customer Agreement applied to
13 "ANY DISPUTE THAT RESULTS FROM THIS AGREEMENT OR FROM THE SERVICES
14 YOU RECEIVE FROM" Verizon, and specifically prohibited class
15 arbitrations. (Citizen Decl., Ex. 2 at 45.) On June 9, 2011,
16 Verizon also emailed Plaintiff a notification of activation, which
17 included a link to a confirmation letter. (Mot. at 3; Citizen
18 Decl., Ex. 3.) The letter directed Plaintiff to Verizon's website,
19 where he could view the Customer Agreement at any time. (Id.)

20 On October 30, 2012, Plaintiff upgraded his phone and entered
21 into a new two-year service contract. (Citizen Decl., Ex. 4.) He
22 electronically signed another sales receipt that contained a
23 statement nearly identical to the one he had signed on June 6,
24 2011.¹ (Id.) Plaintiff was then provided with "various documents
25 and brochures," including a thirty-two page "Your Guide" containing
26 the Customer Agreement ("2012 Customer Agreement"), which, like the

27
28 ¹ The October 30, 2012 statement did not abbreviate the terms
"representative" or "Customer Agreement."

1 2011 Customer Agreement, included an Arbitration Agreement. (Id.
2 ¶ 11; Citizen Decl., Ex. 5.) While the 2011 Arbitration Agreement
3 referred to "ANY DISPUTE THAT RESULTS FROM THIS AGREEMENT OR FROM
4 THE SERVICES YOU RECEIVE FROM" Verizon, the 2012 version applied to
5 "ANY DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS
6 AGREEMENT OR FROM ANY EQUIPMENT, PRODUCTS AND SERVICES YOU RECEIVE
7 FROM" Verizon. (Citizen Decl., Ex. 5 at 23.) Like the 2011
8 Arbitration Agreement, the 2012 Arbitration Agreement specifically
9 prohibited class or collective arbitrations. (Id.) On November 2,
10 2012, Plaintiff received a letter with a notification of upgrade
11 and details about his account. (Citizen Decl., Ex. 6.)

12 When Plaintiff upgraded his phone and entered into the new two
13 year agreement on October 30, 2012, he also purchased Total
14 Equipment Coverage ("TEC"), and received an accompanying TEC
15 brochure. (Citizen Decl. ¶ 14; Citizen Decl., Exs. 4, 5.) TEC is
16 a combined service that offers an Extended Warranty and Wireless
17 Phone Protection plan at a discounted rate. (Citizen Decl. ¶ 13;
18 Citizen Decl., Ex. 7.) The Extended Warranty covers mechanical or
19 electrical defects for a phone after a manufacturer's warranty
20 expires. (Citizen Decl. ¶ 13; Citizen Decl., Ex. 7.) Wireless
21 Phone Protection provides insurance for loss, theft, and damages to
22 a device. (Id.) TEC must be purchased within thirty days of
23 activation or device upgrade, and is available only to Verizon
24 customers who have service with Defendant and have, therefore,
25 agreed to the Customer Agreement. (Citizen Decl. ¶¶ 7, 13.)
26 Plaintiff's service summary reflects "Tec Asurion"² as a "Current

27
28 ² Liberty Mutual Insurance company, or one of its affiliates,
(continued...)

1 Feature[]" on his device at the rate of \$9.99 a month. (Citizen
2 Decl., Ex. 6 at 71.)

3 According to the terms of the 2011 and 2012 Customer
4 Agreements, a customer's "Plan" includes the customer's "monthly
5 allowances and features." (Citizen Decl., Ex. 2 at 42; Citizen
6 Decl., Ex. 5 at 19.) The terms state that "your Plan and any
7 Optional Services you select are your Service." (Id.) After the
8 Arbitration Agreement section, separated by a horizontal line and
9 "Important Information," the 2012 Customer Agreement lists several
10 categories of "Optional Services Terms and Conditions":

- 11 • Media Center and Verizon Apps
- 12 • Messaging Programs
- 13 • Usage Controls
- 14 • Caller ID
- 15 • Home Phone Connect Adaptor Device ("Device") & Home
16 Phone Connect Service ("Service")
- 17 • HomeFusion Broadband Service
- 18 • Content Filters
- 19 • VZ Navigator
- 20 • VZ Navigator Global
- 21 • Push to Talk
- 22 • Group Communication
- 23 • Verizon Wireless Roadside Assistance
- 24 • International Eligibility
- 25 • International Long Distance
- 26 • International Roaming
- 27 • Cruise Ship Service
- 28 • Plan and Feature Discounts

(Citizen Decl., Ex. 5 at 25-29.) The Extended Warranty and
Wireless Phone Protection plans provided under TEC are not
specifically listed as Optional Services.

The 32-page "Your Guide" document concludes with a final
section titled "Extended Limited Warranty or Service Contract."

²(...continued)
underwrites the policy for Wireless Phone Protection. Asurion
Insurance Services, Inc. is "the agent and provides the claims
servicing under this program." (Citizen Decl., Ex. 7.)

1 (Citizen Decl., Ex. 5 at 31.) The heading of this section differs
2 from the "Optional Services" section, and is listed in a more
3 prominent style similar to that used for preceding sections such as
4 "Account Manager," "Wireless Safety & Assistance," and "Return &
5 Exchange Policy." (Id. at 29-30.)

6 The language in both "Your Guide" and a separate "Verizon
7 Wireless Extended Limited Warranty or Service Contract" brochure
8 specify that if a device is purchased in California, the document
9 is a "SERVICE CONTRACT" rather than an "EXTENDED LIMITED WARRANTY."
10 (Citizen Decl., Ex. 5 at 31; Esensten Decl., Ex. B at 22.) The
11 contract has an arbitration clause that mandates arbitration for
12 "[a]ny disputes . . . arising under this Warranty" between
13 Defendant and residents of Connecticut. (Citizen Decl., Ex. 5 at
14 32; Esensten Decl., Ex. B at 23.) It also states that the terms
15 within it are Defendant's "complete Warranty or Service Contract
16 for [the] product." (Id.) The TEC brochure contained the Wireless
17 Phone Protection insurance policy terms, which provided that
18 "disputes or controversies of any nature whatsoever . . . arising
19 out of, relating to, or in connection with" the policy be subject
20 to nonbinding arbitration. (Citizen Decl., Ex. 7 at 74.)

21 The crux of Plaintiff's Complaint is that the extended
22 warranty "does not provide any greater protection for the first
23 year than does the phone manufacturer's identical warranty."
24 (Compl. ¶ 19.) In other words, because the extended warranty must
25 be purchased within thirty days of the initial transaction,
26 Plaintiff contends that customer will make a year's worth of
27 monthly payments for no benefit because the first year of extended
28 warranty coverage overlaps with coverage already provided by the

1 phone's manufacturer. (Id. ¶¶ 17-18.) Plaintiff further alleges
2 that no reasonable person would "have reason to believe that his
3 first twelve payments to Verizon for the 'extended' warranty
4 portion of the 'Total Equipment Coverage' were both duplicative and
5 unnecessary." (Id. ¶ 28.)

6 Plaintiff alleges violations of violations of the Federal
7 Communications Act, 47 U.S.C. § 151, et seq. and California's
8 consumer protection laws, including the Consumers Legal Remedies
9 Act ("CLRA"), Cal. Civil Code § 1750 et seq.; the Unfair
10 Competition Act ("UCL"), Cal. Business & Professions Code § 17200
11 et seq.; and the False Advertising Law ("FAL"), Cal. Business &
12 Professions Code § 17500 et seq. (Id. ¶ 8.) Verizon now moves to
13 compel arbitration.

14 **II. Legal Standard**

15 A party to an arbitration agreement may petition a district
16 court for an order directing that arbitration proceed as provided
17 for in the agreement. 9 U.S.C. § 4. Under the Federal Arbitration
18 Act ("FAA"), 9 U.S.C. § 1 et seq., a written agreement requiring
19 controversies between the contracting parties to be settled by
20 arbitration is "valid, irrevocable, and enforceable, save upon such
21 grounds as exist at law or in equity for the revocation of any
22 contract." 9 U.S.C. § 2. The FAA reflects a "liberal federal
23 policy favoring arbitration agreements" and creates a "body of
24 federal substantive law of arbitrability." Moses H. Cone Mem.
25 Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). The FAA
26 therefore preempts state laws that "stand as an obstacle to the
27 accomplishment of the FAA's objectives." AT&T Mobility LLC v.
28 Concepcion, 563 U.S. 333, 343 (2011). This includes "defenses that

1 apply only to arbitration or that derive their meaning from the
2 fact that an agreement to arbitrate is at issue," as well as state
3 rules that act to fundamentally change the nature of the
4 arbitration agreed to by the parties. Id. at 339, 1750; See also
5 DirectTV, Inc. v. Imbrugia, 136 S.Ct. 463, 471 (2015).

6 **III. Discussion**

7 A. Applicability of 2012 Customer Agreement

8 Verizon contends that the arbitration provision of the 2012
9 Customer Agreement applies, and that Plaintiff must therefore
10 arbitrate his warranty coverage claim. (Mot. at 12.) To determine
11 whether the parties agreed to arbitrate a certain matter, "courts
12 generally . . . should apply ordinary state-law principles that
13 govern the formation of contracts." First Options of Chicago, Inc.
14 v. Kaplan, 514 U.S. 938, 944 (1995). "[T]he outward manifestation
15 or expression of assent is the controlling factor" when determining
16 contract terms. Windsor Mills, Inc. v. Collins & Aikman Corp., 101
17 Cal.Rptr. 347, 350 (Ct. App. 1972).

18 The 2012 Customer Agreement contained the 2012 Arbitration
19 Agreement, which states that the customer agrees to arbitrate "ANY
20 DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS AGREEMENT
21 OR FROM ANY EQUIPMENT, PRODUCTS AND SERVICES YOU RECEIVE FROM"
22 Verizon. Plaintiff responds that the 2012 Arbitration Agreement
23 has no bearing on his extended warranty-based claims. Plaintiff
24 argues that the 2012 Customer Agreement includes an integration
25 clause "regarding Service," disclaims any warranties "about your
26 Service [or] your device," and specifically states that "your Plan
27 and any Optional Services you select are your Service." Although
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1 the Customer Agreement does include a section regarding extended
2 warranties, such warranties are not listed as "Optional Services."

3 Plaintiff contends that his warranty claims are covered not by
4 the 2012 Customer Agreement, but rather by a separate Extended
5 Warranty Contract.³ According to Plaintiff, this separate document
6 describes the terms and conditions of the warranty program and
7 provides for monthly payments specifically for warranty coverage,
8 which terms are not mentioned in the Customer Agreement. The
9 purported Extended Warranty contract further provides that only
10 Connecticut residents must arbitrate "any disputes" arising under
11 the extended warranty contract.

12 The court is not persuaded that the language of the TEC
13 brochure constitutes a distinct "Extended Warranty Agreement"
14 wholly separate from the Customer Agreement. First, extended
15 warranty coverage under the TEC plan is only available to existing
16 Verizon customers, who have by definition accepted the Customer
17 Agreement. Second, the Customer Agreement's arbitration language
18 refers to "any equipment, products, and services" received from
19 Verizon. The Agreement further defines "Service" as comprised of
20 "your Plan and any optional services." The term "plan," in turn,
21 is defined as "monthly allowances and features." Plaintiff's "Tec
22 Asurion" coverage, of which extended warranty coverage is a part,
23 is listed in Plaintiff's service summary as a "current feature."
24 There appears to be little doubt, therefore, that Plaintiff's

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28 ³ It is unclear to what document Plaintiff refers. The court presumes Plaintiff refers to the TEC brochure.

1 extended warranty coverage is part of the "Service" provided by
2 Verizon.⁴

3 The language of the 2012 Arbitration Agreement covers
4 Plaintiff's claims here. An arbitration clause that covers claims
5 and controversies "arising out of or relating to" an agreement is
6 "a broad arbitration clause." See Prima Paint Corp. v. Flood &
7 Conklin Mfg. Co., 388 U.S. 395, 398 (1967). "Broad arbitration
8 clauses are not limited to claims that literally arise under the
9 contract but embrace all disputes between the parties having a
10 significant relationship to the contract, regardless of the label
11 attached to the dispute." Rhodall, 2011 WL 4036418 at *4 (citing
12 Pennzoil Exploration & Production Co. v. Ramco Energy Ltd., 139
13 F.3d 1061, 1067 (5th Cir. 1998)). The Ninth Circuit has also
14 recognized the distinction between arbitration clauses that govern
15 disputes "arising under" an agreement and those that govern
16 disputes "related to" an agreement. See Tracer Research Corp. v.
17 Nat'l Env'tl. Servs. Co., 42 F.3d 1292, 1295 (9th Cir. 1994). The
18 arbitration language here, which refers to "ANY DISPUTE THAT IN ANY
19 WAY RELATES TO OR ARISES OUT OF THIS AGREEMENT OR FROM ANY
20 EQUIPMENT, PRODUCTS AND SERVICES YOU RECEIVE FROM" Verizon, is
21 sufficiently broad to encompass Plaintiff's warranty-based claims.

22 B. Unconscionability
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25 ⁴ Even if warranty coverage were not part of the "Plan"
26 provided by Verizon, it is difficult to imagine how such coverage
27 would not constitute an "optional service," notwithstanding the
28 omission of extended warranty coverage from the list of possible
optional services contained within the Customer Agreement. As
Plaintiff himself points out, he need not have exercised the option
to obtain TEC coverage. Plaintiff did, however, opt for that
additional service.

1 "[A]greements to arbitrate may be invalidated by generally
2 applicable contract defenses, such as fraud, duress, or
3 unconscionability." Concepcion, 563 U.S. at 339; See also Kilgore
4 v. KeyBank, Nat. Ass'n, 673 F.3d 947, 963 (9th Cir.2012)
5 ("Concepcion did not overthrow the common law contract defense of
6 unconscionability whenever an arbitration clause is involved.
7 Rather, the Court affirmed that the [FAA's] savings clause
8 preserves generally applicable contract defenses such as
9 unconscionability"); Community State Bank v. Strong, 651
10 F.3d 1241, 1267 n.28 (11th Cir. 2011) ("The ability of such
11 contractual defects to invalidate arbitration agreements is not
12 affected by the Supreme Court's decision in [Concepcion]. . . .").

13 Unconscionability has both a "procedural" and "substantive"
14 element. See Kilgore, 673 F.3d at 963. The former generally
15 describes an absence of meaningful choice on the part of one of the
16 parties, while the latter applies to contract terms which are
17 unreasonably favorable to the other party. Stirlen v. Supercuts,
18 Inc., 51 Cal. App. 4th 1519, 1531 (1997). "[A]n arbitration
19 agreement, like any other contractual clause, is unenforceable if
20 it is both procedurally and substantively unconscionable." Pokorny
21 v. Quixtar, 601 F.3d 987, 996 (9th Cir. 2010). California courts
22 apply a "sliding scale" analysis in making this determination.
23 "[T]he more substantively oppressive the contract term, the less
24 evidence of procedural unconscionability is required to come to the
25 conclusion that the term is unenforceable, and vice versa."
26 Armendariz v. Found. Health Psychcare Servs., Inc., 24 Cal.4th 83,
27 114 (2000). Both procedural and substantive unconscionability must
28 be present for a contract to be declared unenforceable, but they

1 need not be present to the same degree. Id.; See also Harper v.
2 Ultimo, 113 Cal. App. 4th 1402, 1406 (2003).

3 1. Procedural Unconscionability

4 Procedural unconscionability "concerns the manner in which the
5 contract was negotiated and the respective circumstances of the
6 parties at that time." Ferguson v. Countrywide Credit Indus.,
7 Inc., 298 F.3d 778, 783 (9th Cir. 2002). Courts examine two
8 factors for procedural unconscionability: (1) oppression, which
9 focuses on bargaining power disparity, absence of meaningful
10 choice, and lack of negotiation; and (2) surprise, which refers to
11 hidden terms, prolix forms, and whether the contractual terms meet
12 the reasonable expectations of the weaker party. See id.

13 Plaintiff first argues, briefly, that the Customer Agreement
14 is procedurally unconscionable because it is a contract of
15 adhesion. (Opp. at 17-18.) The fact that a contract is adhesive,
16 however, "is not, alone, sufficient to render it unconscionable."
17 Malone v. Superior Court, 226 Cal. App. 4th 1551, 1561(2014); See
18 also Zaborowski v. MHN Gov't Servs., Inc., 936 F. Supp. 2d 1145,
19 1152 (N.D. Cal. 2013), aff'd, 601 F. App'x 461 (9th Cir. 2014).
20 Indeed, as Concepcion acknowledged, "the times in which consumer
21 contracts were anything other than adhesive are long past."
22 Concepcion, 563 U.S. at 346-47. Although Plaintiff cites to cases
23 highlighting contracts of adhesion as significant factors in the
24 unconscionability analysis, those cases arose in the employment
25 context, and did not concern consumer contracts. (Opp. at 17-18,
26 citing Elite Logistics Corp. v. Mol Am., Inc., 2012 WL 2366397
27 (C.D. Cal 2012) and Poublon v. Robinson Co., No. 12-cv-06654-CAS,
28 2015 WL 588515 (C.D. Cal. Jan. 12, 2015).) In the consumer

1 setting, "absent unusual circumstances, use of a contract of
2 adhesion establishes a minimal degree of procedural
3 unconscionability." Hahn v. Massage Envy Franchising, LLC, No.
4 12cv153 DMS, 2014 WL 5100330 at *6 (S.D. Cal. Sept. 25, 2014)
5 (citing Gatton v. T Mobile USA, Inc., 152 Cal. App. 4th 571
6 (2007)).

7 Plaintiff further contends that the Arbitration Agreement is
8 procedurally unconscionable because Verizon concealed its terms
9 from Plaintiff and did not allow him to review those terms until
10 after he had agreed to them. A party who has received an offer but
11 does not know all of the terms of the offer may still accept the
12 terms by demonstrating acceptance through his conduct. Windsor
13 Mills, 101 Cal.Rptr. at 350. A customer cannot avoid arbitration
14 when he later "notic[es] the statement of terms but den[ies]
15 reading it closely enough to discover the agreement to arbitrate."
16 Hill v. Gateway 2000, Inc., 105 F.3d 1147, 1148 (7th Cir. 1997).

17 Here, Verizon argues that Plaintiff signed an electronic
18 receipt that alerted him to the existence of the Customer Agreement
19 and additional terms, including the settlement of disputes by
20 arbitration. (Citizen Decl., Ex. 4.) He was then provided with
21 "various documents and brochures," including a thirty-two page
22 "Welcome Guide" containing the Customer Agreement. (Langere Decl.,
23 ¶ 11; Citizen Decl., Ex. 5.) The heading "CUSTOMER AGREEMENT &
24 IMPORTANT INFORMATION" is displayed in large, capital letters no
25 smaller than other section identifiers. Furthermore, the
26 Arbitration Agreement within the Customer Agreement is displayed
27 beneath a subheading that reads, "How Do I Resolve Disputes With
28 Verizon Wireless?" In addition, the Arbitration Agreement, unlike

1 other portions of the Customer Agreement, is displayed entirely in
2 capital letters. Thus, contrary to Plaintiff's argument, Verizon
3 did not conceal the terms of the Arbitration Agreement.

4 Nor does the fact that Plaintiff did not receive the Customer
5 Agreement prior to his purchase establish a high degree of
6 procedural unconscionability. "[T]he economic and practical
7 considerations involved in selling services to mass consumers . . .
8 make it acceptable for terms and conditions to follow the initial
9 transaction." Bischoff v. DirectTV, Inc., 180 F. Supp. 2d 1097,
10 1105 (C.D. Cal. 2002) (citing ProCD, Inc. v. Zeidenberg, 86 F.3d
11 1447, 1451 (7th Cir.1996)). As the Gateway court explained,
12 "[C]ashiers cannot be expected to read legal documents before
13 ringing up sales. . . . Customers as a group are better off
14 when vendors skip costly and ineffectual steps such as telephonic
15 recitation, and instead use a simple approve-or-return device.
16 Competent adults are bound by such documents, read or unread."
17 Gateway, 105 F.3d at 1149.

18 Here, Plaintiff acknowledged that he had the opportunity to
19 review the Customer Agreement when he signed the receipt. More
20 importantly, even if Plaintiff was not privy to the exact terms of
21 the Arbitration Agreement at the time he accepted the Customer
22 Agreement, by the terms of the Customer Agreement, Plaintiff had
23 fourteen days after acceptance to review the terms of the Customer
24 Agreement and cancel his service if he so desired. (Citizen Decl.,
25 Ex. 5 at 20.)

26 Given the practical realities making it unrealistic for
27 communication service providers to negotiate all terms with
28 customers before beginning to provide the service, the sufficiently

1 prominent wording of the Customer Agreement and Arbitration
2 Agreement, and Plaintiff's ability to return the device and
3 repudiate the agreement within fourteen days of purchase, the
4 Customer Agreement at issue here is only minimally procedurally
5 unconscionable.

6 2. Substantive Unconscionability

7 Substantive unconscionability focuses on the one-sidedness of
8 the contract terms. Armendariz, 24 Cal.4th at 114. "Where an
9 arbitration agreement is concerned, the agreement is unconscionable
10 unless the arbitration remedy contains a 'modicum of
11 bilaterality.'" Ting v. AT&T, 319 F.3d at 1149 (citing Armendariz,
12 319 F.3d at 117).

13 The majority of Plaintiff's argument regarding
14 unconscionability appears to pertain not to the Arbitration
15 Agreement, but to other portions of the Customer Agreement. For
16 example, although Plaintiff is correct that portions of the
17 Customer Agreement appear to limit available damages, the
18 Arbitration Agreement itself states that "AN ARBITRATOR CAN AWARD
19 YOU THE SAME DAMAGES AND RELIEF . . . AS A COURT WOULD." (Citizen
20 Decl., Ex. 5 at 23.) This court's substantive unconscionability
21 analysis is confined to the terms of the Arbitration Agreement.
22 See Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395,
23 403 (1968) ("[I]n passing upon a[n] application for a stay while
24 the parties arbitrate, a federal court may consider only issues
25 relating to the making and performance of the agreement to
26 arbitrate.").

27 Plaintiff argues that the Arbitration Agreement is
28 substantively unconscionable because it exempts small claims

1 actions. (Opp. at 23.) Plaintiff appears to suggest that because
2 it is more likely that Verizon will pursue small claims actions
3 against customers than the reverse, this provision lacks
4 bilaterality, citing the district court's Order in Merkin v. Vonage
5 America, No. 13-cv-08026 CAS, 2014 WL 457942 (Feb. 3, 2014)
6 ("Merkin"). The Ninth Circuit, however, reversed the district
7 court's denial of the defendant's motion to compel arbitration, and
8 remanded with instructions to grant the motion. Merkin v. Vonage
9 Am., 639 Fed. Appx. 481 at 482 (9th Cir. 2016). Furthermore, the
10 district court did not conclude that the exemption of small claims
11 from arbitration weighed in favor of unconscionability. Merkin,
12 2014 WL 457942 at 10. Rather, the court examined a contractual
13 provision exempting small claims and three other categories of
14 claims from arbitration and determined that the exclusion of the
15 other categories of claims, but not small claims, rendered the
16 provision one-sided. Id. at 10-11. To the extent Plaintiff
17 contends that the preservation of both parties' rights to bring
18 actions in small claims court works against his and consumers'
19 favor, this court disagrees.

20 In some cases, barriers to pursuing statutory remedies, such
21 as "filing and administrative fees attached to arbitration that are
22 so high as to make access to the forum impracticable," can warrant
23 invalidating an arbitration agreement. American Express Co. v.
24 Italian Colors, 133 S. Ct. 2304, 2310-11. Those barriers to entry
25 are absent here. The Arbitration Agreement provides that, unless
26 the parties agree otherwise, arbitration will take place "in the
27 county of [the customer's] billing address." (Citizen Decl., Ex. 5
28 at 23.) The Arbitration Agreement further provides that if the

1 consumer is unable to pay the filing fee, Verizon will pay the
2 filing fee and "any administrator and arbitrator fees charged
3 later." (Citizen Decl., Ex. 5 at 24.) If a plaintiff is awarded
4 less than \$5,000 but greater than any settlement offer prior to
5 arbitration, the Arbitration Agreement obligates Verizon to pay
6 \$5,000, plus attorney's fees and expenses. (Id.) Thus, even
7 though Plaintiff's claims involve charges of \$1.85 to \$3.00 per
8 month, the low value of claims is not itself a barrier to pursuing
9 a claim. See Concepcion, 563 U.S. at 3251-52 (agreeing with
10 appellate court that arbitration agreement providing an award of "a
11 minimum of \$7,500 and twice [plaintiffs'] attorney's fees if they
12 obtain an arbitration award greater than [the] last settlement
13 offer" was "sufficient to provide incentive for the individual
14 prosecution of meritorious claims that are not immediately
15 settled.").

16 The Arbitration Agreement here is only minimally procedurally
17 unconscionable, and is not accompanied by any significant
18 substantive unconscionability. The Arbitration Agreement is,
19 therefore, enforceable.

20 **IV. Conclusion**

21 For the reasons stated above, Defendant's Motion to Compel is
22 GRANTED.

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Counsel to file a status report six months from today's order.

IT IS SO ORDERED.



Dated: September 23, 2016

DEAN D. PREGERSON
United States District Judge