



1 to, race, sex, sexual orientation, **religion**, national origin, age,  
2 marital status, military or veterans status, physical or mental  
3 disability or handicap, or medical condition), harassment or  
4 **retaliation**...and claims for violation of any federal, state, or other  
5 governmental law, statute, regulation, or ordinance....

6 (*Id.*, at 2) (emphasis added). The agreement’s choice of law clause further stipulates that it shall  
7 be governed by the Federal Arbitration Act, and “[t]o the extent that the Federal Arbitration Act  
8 is inapplicable...the arbitration law of the state in which [Sasiada]...last worked for Switch shall  
9 apply.” (*Id.*). The agreement is three pages long and the text is in a consistent and standard  
10 typeface throughout, with bolded subheadings. (*See generally id.*).

11 After Sasiada initiated this action, Switch’s counsel attempted to obtain a stipulation to  
12 arbitrate and sent Sasiada’s counsel a copy of the agreement. (*See generally* ECF No. 10-3).  
13 Switch informs the court that it filed the instant motion after Sasiada failed to agree to submit  
14 this action to arbitration. (*Id.*).

## 15 **II. Legal Standard**

16 The Federal Arbitration Act (“FAA”) provides for the enforcement of arbitration  
17 agreements in any contract involving interstate commerce. 9 U.S.C. §§ 1–2; *Citizens Bank v.*  
18 *Alafabco, Inc.*, 539 U.S. 52, 56 (2003). Under the FAA, arbitration agreements “shall be valid,  
19 irrevocable, and enforceable, save upon such grounds that exist at law or in equity for the  
20 revocation of any contract.” *Id.* § 2. (emphasis added). The Act further dictates that a party to  
21 an arbitration agreement may invoke his or her rights under the Act by petitioning the district  
22 court “for an order directing that such arbitration proceed in the manner provided for” in the  
23 agreement. *Id.* § 4.

24 When addressing a motion to compel arbitration, the court’s role is “limited to  
25 determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the  
26 agreement encompasses the dispute at issue.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207  
27 F.3d 1126, 1130 (9th Cir. 2000) (citing 9 U.S.C. § 4; *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716,  
28 719–20 (9th Cir. 1999)). While federal law governs the determination of scope, state law  
governs the determination of an agreement’s validity. *Tracer Rsch. Corp. v. Nat’l Env’t Servs.*  
*Co.*, 42 F.3d 1292, 1294 (9th Cir. 1994); *see also Goldman, Sachs & Co. v. City of Reno*, 747

1 F.3d 733, 743 (9th Cir. 2014). As such, state law governs contract defenses raised to invalidate  
2 an agreement to arbitrate. *Shroyer v. New Cingular Wireless Servs., Inc.*, 498 F.3d 976, 988 (9th  
3 Cir. 2007); *Cir. City Stores, Inc. v. Adams*, 279 F.3d 889, 895 (9th Cir. 2002).

### 4 **III. Discussion**

#### 5 **A. This action must be submitted to arbitration.**

6 Because Sasiada does not dispute that this action is within the scope of the arbitration  
7 agreement, the court need only decide whether the arbitration agreement is valid.<sup>1</sup> (*See*  
8 *generally* ECF No. 18). Sasiada argues that he should not be compelled to arbitrate because the  
9 arbitration agreement is unconscionable. (ECF No. 18, at 7–10). Sasiada provides no evidence  
10 or controlling law to support his argument.

11 Unconscionability is a state law contract defense “that may be applied to invalidate  
12 arbitration agreements” without contravening the FAA. *Shroyer*, 498 F.3d at 988 (citations  
13 omitted). Nevada law governs here because Sasiada worked for Switch in Nevada, all parties are  
14 Nevadans, the alleged events occurred in Nevada, and the choice-of-law clause dictates that  
15 Nevada law apply. (ECF No. 1, at 1–2).

16 “Nevada law requires both procedural and substantive unconscionability to invalidate a  
17 contract as unconscionable.” *U.S. Home Corp. v. Michael Ballesteros Tr.*, 415 P.3d 32, 40 (Nev.  
18 2018). But a stronger showing under one type of unconscionability permits a weaker showing on  
19 the other. *Gonski v. Second Jud. Dist. Ct. of State ex rel. Washoe*, 245 P.3d 1164, 1169 (Nev.  
20 2010) (overruled on other grounds by *U.S. Home Corp. v. Michael Ballesteros Tr.*, 415 P.3d 32  
21 (Nev. 2018)). The court finds that the arbitration agreement is neither procedurally nor  
22 substantively unconscionable.

#### 23 *I. The agreement is not procedurally unconscionable.*

24 An arbitration agreement is procedurally unconscionable “either because (1) the contract  
25 is an adhesion contract, or because (2) the terms are not readily ascertainable upon a review of  
26 the contract.” *CVSM, LLC v. Doe Dancer V*, 435 P.3d 659, 2019 WL 978679, at \*2 (Nev. 2019)

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28 <sup>1</sup> Any arguments to which no response is supplied may be deemed conceded as unopposed. *See* LR 7-2(d).

1 (citations omitted) (unpublished table decision). Procedural unconscionability is concerned,  
2 essentially, with unfair surprise—when the “manner” in which the disputed contract is presented  
3 and negotiated misrepresents the “nature or effect of the contract.” *FQ Men's Club, Inc. v. Doe*  
4 *Dancers I*, 471 P.3d 753, 2020 WL 5587435, at \*2 (Nev. 2020) (unpublished table decision).

5 Sasiada argues that the arbitration agreement is procedurally unconscionable because he  
6 had no meaningful opportunity to negotiate its terms as it was a “take it or leave it” contract.  
7 (ECF No. 18, at 8). He asserts—while providing no evidentiary support—that had he not signed  
8 the agreement, “he would not have been hired.” (*Id.* at 7). But this argument is unavailing under  
9 Nevada law.

10 An adhesion contract is “a standardized contract form offered to consumers of goods and  
11 services essentially on a ‘take it or leave it’ basis, without affording the consumer a realistic  
12 opportunity to bargain.” *Obstetrics and Gynecologists v. Pepper*, 693 P.2d 1259, 1260 (Nev.  
13 1985). The Nevada Supreme Court has held that “the adhesion contract doctrine” does *not* apply  
14 to employment cases. *Kindred v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 996 P.2d 903,  
15 907 (Nev. 2000) (rejecting an employee’s claim of procedural unconscionability in the  
16 employment context when the employee alleged, with no evidentiary support, that she would not  
17 have been hired had she not signed the arbitration agreement).

18 Sasiada alleges, in general and conclusory terms, that he was not allowed an opportunity  
19 to negotiate the terms of the agreement and that he was given no choice but to accept it. But  
20 Sasiada provides no evidentiary support for these allegations and, in Nevada, a court cannot  
21 apply the adhesion contract doctrine to employment cases as a matter of law. Furthermore, by  
22 his own admission, he did not sign the agreement until the day after he began employment. (ECF  
23 No. 18, at 8). This indicates he was given time to review the agreement before signing.

24 Turning to whether the terms of the agreement were readily ascertainable, the court finds  
25 that they were. Terms of a contract are not readily ascertainable if they are “presented or  
26 negotiated in a way that conceals the terms’ meaning.” *CVSM, LLC*, 2019 WL 978679, at \*2.  
27 For example, terms are not readily ascertainable if they are in fine print or “buried in an endnote  
28 or exhibit.” *Id.* (citations omitted).

1           The terms of the agreement here could not be clearer. The agreement is titled, in bold  
2 and all caps, “Mutual Agreement to Arbitrate Claims.” (ECF No. 9-2, at 2). The agreement is  
3 only three pages in length and is written in a standard typeface and font size. (*See generally, id.*).  
4 Subsections are divided by paragraph breaks with bolded subheadings conveying their content.  
5 (*Id.*). No terms are concealed in fine print or buried in endnotes. (*Id.*). This court cannot fairly  
6 find that Sasiada was surprised by the terms of the agreement.

7                         2.       *The agreement is not substantively unconscionable.*

8           As the court has found that the agreement is not procedurally unconscionable, the  
9 arbitration agreement cannot be invalidated on unconscionability grounds because Nevada  
10 requires a finding of *both* procedural and substantive unconscionability. But the court will  
11 nevertheless address Sasiada’s remaining arguments.

12           A contract is substantively unconscionable when it contains oppressive terms or is unduly  
13 one-sided. *Gonski*, 245 P.3d, at 1169. Sasiada argues that the agreement is one-sided because it  
14 compels arbitration of claims employees are likely to bring against Switch but exempts from  
15 arbitration claims Switch is likely to bring against its employees. (ECF No. 18, at 13). Sasiada  
16 also argues that, when he signed the agreement, he “could not have conceivably comprehended”  
17 that his request for a religious exemption would be denied because Switch did not yet have a  
18 vaccination policy. (ECF No. 18, at 8).

19           Sasiada’s first argument is meritless because he mischaracterizes the terms of the  
20 arbitration agreement and the case to which he cites.<sup>2</sup> While the agreement exempts from  
21 arbitration claims for “workers’ compensation or unemployment compensation benefits,” it does  
22 *not* exempt “claims for wages, bonuses, or other compensation due; claims for breach...; tort  
23 claims;...and claims for violation of any federal, state, or other governmental law....” (ECF No.  
24 9-2). Some of these claims are more likely to be brought by an employee than by Switch, and  
25 others are equally likely to be brought by both.

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27                         <sup>2</sup> The case Sasiada cites in support of his position is not only distinguishable because the  
28 arbitration agreement there contains completely different terms to the agreement here, but is  
inapplicable because it applies California caselaw. *Ferguson v. Countrywide Credit Indus., Inc.*,  
298 F.3d 778 (9th Cir. 2002) (applying California law on unconscionability).

1 Sasiada's second argument is similarly unpersuasive. He *appears* to argue that the  
2 agreement is unconscionable because it compels arbitration of claims arising under later-adopted  
3 company policies. But he fails to explain *how* this makes the agreement oppressive or one-  
4 sided.<sup>3</sup> A later-adopted policy could just as easily result in more claims being brought by Switch  
5 as the employees. The fact that Switch's vaccination policy did not exist when Sasiada entered  
6 into the arbitration agreement is irrelevant to whether the agreement is unconscionable, either  
7 substantively or procedurally.

8 The court finds that the agreement is not one-sided or oppressive. Far from it, the  
9 agreement requires Switch to cover the costs of arbitration (unless Sasiada is the party initiating  
10 the claim, in which case he is required to pay an equal share of the filing fee); provides both  
11 parties with an equal opportunity to arbitrate; and sets forth clearly the procedure for asserting  
12 claims. As the court has found no reason to invalidate the arbitration agreement, and the parties  
13 do not dispute that this action is within the scope of the agreement, Switch's motion to compel  
14 arbitration is GRANTED.

15 3. This action must be dismissed *without prejudice*.

16 Switch asks this court to dismiss this action with prejudice, or alternatively, to stay the  
17 action pending arbitration. (ECF No. 9, at 12). But a dismissal "with prejudice" constitutes an  
18 appealable, final judgment on the merits. *See Classic Auto Refinishing, Inc. v. Marino*, 181 F.3d  
19 1142, 1144 (9th Cir. 1999) (The phrase "final judgment on the merits" is often used  
20 interchangeably with "dismissal with prejudice."); *Duke Energy Trading & Mktg., L.L.C. v.*  
21 *Davis*, 267 F.3d 1042, 1048 (9th Cir. 2001) ("a final decision is a decision by the district court  
22 that ends the litigation on the merits and leaves nothing for the court to do but execute the  
23 judgment" (citations omitted)).

24 An order compelling arbitration is not a final decision on the merits of the action unless  
25 the action was brought "solely to compel specific performance of an agreement to arbitrate as it

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26  
27 <sup>3</sup> The court reminds Sasiada that it will not construct arguments for him. *Couturier v.*  
28 *Am. Invsco Corp.*, No. 2:12-cv-01104-APG-NJK, 2013 WL 4499008, at \*3 (D. Nev. Aug. 20,  
2013) ("A judge is the impartial umpire of legal battles, not a party's attorney. He is neither  
required to hunt down arguments the parties keep camouflaged, nor required to address  
perfunctory and undeveloped arguments.").

1 resolves the only issue before the district court.” *Delta Computer Corp. v. Samsung*  
2 *Semiconductor & Telecommunications Co.*, 879 F.2d 662, 665 (9th Cir. 1989) (cleaned up)  
3 (citations omitted). Otherwise, a district court’s order compelling arbitration is an unappealable,  
4 interlocutory order. *Id.*

5 This court is not, by compelling arbitration, rendering a decision on the merits of this  
6 case—employment discrimination. It is merely finding that this action is subject to arbitration.  
7 The court therefore dismisses this entire action *without* prejudice. *Johnmohammadi v.*  
8 *Bloomington's, Inc.*, 755 F.3d 1072, 1073–74 (9th Cir. 2014) (“a district court may either stay  
9 the action or dismiss it outright when, as here, the court determines that all of the claims raised in  
10 the action are subject to arbitration”).

11 B. Switch is entitled to attorney’s fees.

12 In addition to asking this court to compel arbitration and dismiss this action, Switch  
13 argues it is entitled to attorney’s fees due to Sasiada’s “frivolous” and “bad faith” refusal to  
14 submit to arbitration. (ECF No. 9, at 11). Switch points to its attempts to avoid unnecessary  
15 motion practice by stipulating to arbitration with Sasiada, sending Sasiada’s counsel a sample  
16 motion to compel arbitration in another case, and Sasiada’s delay in responding and ultimate  
17 refusal to arbitrate. (ECF No. 9-2).

18 Under the American Rule, a prevailing party is not entitled to an award of attorney’s fees  
19 absent a contract, statute, or rule authorizing such an award. *Int’l Union of Petroleum & Indus.*  
20 *Workers v. W. Indus. Maint., Inc.*, 707 F.2d 425, 428 (9th Cir. 1983). An exception exists when  
21 “a party frivolously or in bad faith refuses to submit a dispute to arbitration.” *United Food &*  
22 *Com. Workers Union v. Alpha Beta Co.*, 736 F.2d 1371, 1383 (9th Cir. 1984). In *United Food*,  
23 the circuit court denied an award of attorney’s fees because it found that although “a number” of  
24 the losing party’s arguments against arbitration were frivolous, its principal argument was not.  
25 *Id.*

26 In *Petroleum & Industrial Workers*, the Ninth Circuit explained that when a party  
27 employs dilatory tactics, an award of attorney’s fees is necessary to further the goals of  
28 “industrial stabilization.” *Cf.* 707 F.2d at 428 (holding in the context of a party refusing to abide

1 by an arbitration award). Because “the threat of an award of attorneys’ fees tends to deter  
2 frivolous dilatory tactics” and promotes the strong federal policy favoring arbitration, an award  
3 of attorney’s fees is appropriate when the party opposing arbitration demonstrates “obstinacy” in  
4 denying the other party its clear legal right to arbitrate. *Cf. id.*

5 Looking to decisions within this circuit, one district court awarded attorney’s fees when  
6 the losing party cited “virtually no legal authority for its positions,” argued against a “long line”  
7 of binding authority, and “dragged out” the dispute by failing to timely respond to repeated  
8 requests for arbitration. *Gen. Teamsters Local No. 174 v. Nw. Infrastructure, Inc.*, No. C06-  
9 1122P, 2007 WL 185012, at \*4 (W.D. Wash. Jan. 19, 2007). Another court awarded fees after  
10 finding that the party opposing arbitration ignored controlling caselaw and repeatedly refused  
11 arbitration requests. *Int’l Union of Painters Allied Trades Dist. Council Local, No. 15 v.*  
12 *Diversified Flooring Specialist, Inc.*, No. 2:06-cv-0358-RLH-PAL, 2007 WL 923936, at \*6 (D.  
13 Nev. Mar. 23, 2007).

14 Here, the court finds that Sasiada engaged in frivolous and bad-faith conduct warranting  
15 an award of attorney’s fees to Switch. All of Sasiada’s arguments against the validity of the  
16 arbitration agreement are patently meritless. In his response opposing arbitration, Sasiada  
17 ignores clear, binding case law that Nevada does not apply the adhesion contract doctrine to  
18 employment cases. For reasons unknown, Sasiada cites—almost exclusively—cases applying  
19 California law in support of his unconscionability argument, rather than Nevada law. (ECF No.  
20 7, at 6–7). The California cases he *does* cite are also clearly distinguishable. And, he resisted  
21 Switch’s repeated attempts to stipulate to arbitration.

22 Under these circumstances, the court finds that Switch is entitled to an award of its  
23 reasonable attorney’s fees incurred in this action. Switch is instructed to file, within 30 days of  
24 this order, a properly supported motion for attorney’s fees setting forth its requested fee amount.  
25 The court reminds Switch that, under LR 54-14(a), it must include an itemized list of the  
26 categories of work performed by its attorneys, a reasonable description thereof, and the total  
27 associated fee amount for each category, with appropriate citations to the supporting exhibits.  
28 Sasiada may file an opposition to that motion within 14 days. The opposition must be compliant



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with LR 54-14(d).

**IV. Conclusion**

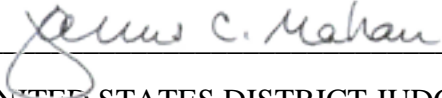
Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Switch's motion to compel arbitration and dismiss this action (ECF Nos. 9, 10) be, and the same hereby is, GRANTED in part and DENIED in part.

Switch is ordered to file a motion for attorney's fees consistent with the foregoing.

The court orders this action dismissed **without** prejudice.

DATED February 5, 2024.

  
UNITED STATES DISTRICT JUDGE