UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANI BELINDA FISCHER,

Plaintiff,

v.

RENT-A-CENTER, INC.,

Defendant.

No. 2:14-cv-00918-MCE-AC

MEMORANDUM AND ORDER

On April 15, 2014, Plaintiff Dani Belinda Fischer ("Plaintiff") filed the instant action against Defendant Rent-A-Center, Inc. ("Defendant"), alleging claims under the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, ("RFDCPA") and the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"). See Compl., ECF No. 1. On May 14, 2014, Defendant filed a motion to compel arbitration and to stay this action in the interim. Mot., ECF No. 5. In the alternative, Defendant moved to dismiss Plaintiff's Complaint. Id. Plaintiff timely opposed Defendant's Motion. Opp'n, ECF No. 9. For the following reasons, Defendant's motion to compel arbitration is GRANTED and this litigation is STAYED pending that arbitration. Defendant's motion to dismiss is DENIED as moot.[1]

[1] Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local R. 230(g). See ECF No. 12.

BACKGROUND[2]

Defendant rents name-brand furniture, electronics, appliances and computers to consumers. On July 15, 2012, Plaintiff entered into a Consumer Lease Agreement with Plaintiff whereby Defendant agreed to lease living room furniture to Plaintiff in exchange for a lease payment of $172.86 per month. The Consumer Lease Agreement, in relevant part, states: "This lease requires you to sign a separate arbitration agreement. You should read the arbitration agreement before signing this lease." Exhibit A, ECF No. 5 at 13 (emphasis removed). The Arbitration Agreement, in relevant part, states:

> You and Rent-A-Center hereby agree to enter into this Arbitration Agreement ("Agreement"). . . . The Federal Arbitration Act (9. U.S.C. § 1 et seq.) shall govern this Agreement, which evidences a transaction involving interstate commerce.
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> You and RAC hereby agree that any and all "Claims" as defined below (unless specifically excluded . . .) that arise under, arise out of, or relate in any way to any Consumer Lease or Rental-Purchase Agreement and/or any and all services rendered under any Consumer Lease Rental-Purchase Agreement, entered into between you and RAC, at any time, shall only be resolved by binding arbitration in accordance with the terms and procedures set forth in this Arbitration Agreement.
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> . . .
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> (B) What Claims Are Covered: "Claim shall be interpreted as broadly as the law allows and means any dispute or controversy between you and RAC, its officers, directors, employees, or agents, its parent company, subsidiary, affiliate entities, and assigns of any of them, based on any legal theory, including but not limited to allegations based on negligence, breach of contract, tort, fraud, misrepresentation, trespass, the common law, or any statute, regulation or ordinance.

Exhibit A, ECF No. 5 at 14.

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[2] Unless otherwise indicated, these facts are taken, largely verbatim, from Plaintiff's Complaint, ECF No. 1, and Defendant's Motion to Compel, ECF No. 5.

On or about July 2013, Plaintiff's account became past due after she failed to make timely payments as set forth in the Agreement. Defendant contends that it attempted to contact Plaintiff to discuss payments on the account.

Plaintiff alleges that Defendant's communications here were excessive, sometimes occurring multiples times in a single day and amounting to harassment under the circumstances. Through this action, Plaintiff seeks an injunction prohibiting Defendant from contacting Plaintiff on Plaintiff's cellular telephone using an automated dialing system, as well as monetary damages.

Defendant's motion to compel arbitration and to stay this action pending arbitration is currently pending before the Court. Plaintiff "does not dispute the specific terms of the arbitration agreement." Opp'n, EF No. 9 at 3 n.1. Instead, Plaintiff disputes the applicability of the arbitration agreement to her claims. Specifically, Plaintiff opposes Defendant's motion on three grounds: (1) Defendant's motion to compel arbitration must be denied, unless and until Defendant can establish that the repeated calls it placed to Plaintiff's cellular telephone were arising out of or related in any way to Plaintiff's consumer loan; (2) Plaintiff's TCPA claim does not fall within the substantive scope of the purported arbitration agreement; and (3) Plaintiff's RFDCPA claim specifically prohibits Plaintiff's waiver of rights to a jury trial. See id. at 2-3, 6-16.

ANALYSIS

"The [Federal Arbitration Act ("FAA")] was enacted in 1925 in response to widespread judicial hostility to arbitration agreements." AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1745 (2011). Under the FAA, 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. Section 2 of the FAA "reflect[s] . . . a 'liberal federal policy favoring arbitration." Concepcion, 131 S. Ct. at 1745 (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24

(1983)). At the same time, however, § 2 reflects "the 'fundamental principle that arbitration is a matter of contract.'" Id. (quoting Rent-A-Center, W., Inc. v. Jackson, 130 S. Ct. 2772, 2776 (2010)). "[Section] 3 requires courts to stay litigation of arbitral claims pending arbitration of those claims, in accordance with the terms of the agreement; and § 4 requires courts to compel arbitration 'in accordance with the terms of the agreement' upon the motion of either party to the agreement . . . ." Id. at 1748.

Thus, "[b]y its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985) (citing 9 U.S.C. §§ 3, 4) (emphasis in original). "The standard for demonstrating arbitrability is not a high one; in fact, a district court has little discretion to deny an arbitration motion, since the [FAA] is phrased in mandatory terms." Republic of Nicaragua v. Standard Fruit Co., 937 F.2d 469, 475 (9th Cir. 1991). "Moreover, the scope of an arbitration clause must be interpreted liberally and 'as a matter of federal law, any doubts concerning the scope of arbitrable disputes should be resolved in favor of arbitration.'" Concat LP v. Unilever, PLC, 350 F. Supp. 2d 796, 804 (N.D. Cal. 2004) (quoting Moses H. Cone, 460 U.S. at 24; Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1144 (9th Cir. 1991); French v. Merrill Lynch, 784 F.2d 902, 908 (9th Cir. 1986)).

Thus, "[a]n order to arbitrate . . . should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960).

In determining whether to compel arbitration, the Court may not review the merits of the dispute. Instead, the Court must limit its inquiry to three steps: (1) whether the contract containing the arbitration agreement evidences a transaction involving interstate commerce; (2) whether there exists a valid agreement to arbitrate; and (3) whether the

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dispute(s) fall within the scope of the agreement to arbitrate. Standard Fruit, 937 F.2d at 476-78.

A. Transaction Involving Interstate Commerce

The FAA provides that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable . . . ." 9 U.S.C. § 2. Section 1 defines "commerce" to mean, among other things, "commerce among the several States or with foreign nations . . . ." Id. § 1. "The 'interstate commerce' provision has been interpreted broadly, embracing any agreement that in its operation directly or indirectly affects commerce between states in any fashion." Affholter v. Franklin Cnty. Water Dist., 1:07-cv-0388-OWW-DLB, 2008 WL 5385810, at *2 (E.D. Cal. Dec. 23, 2008) (citing Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 277-282 (1995)).

In this case, the parties do not dispute that the Consumer Lease Agreement evidences a transaction involving interstate commerce. Indeed, the contract between the parties is a contract to lease living room furniture between citizens of different states—California and Delaware. See Compl., ECF No. 1 at 2; see also ECF No. 5 at 14, 16. Accordingly, the transaction "involve[es] interstate commerce." See Ackerberg v. Citicorp USA, Inc., 898 F. Supp. 2d 1172, 1175, 1177 (N.D. Cal. 2012) (compelling arbitration under the FAA based on arbitration clause contained in credit card agreement between citizens of different states); see generally Allied-Bruce Terminix Cos., 513 U.S. at 274-75 (interstate-commerce requirement should be construed broadly to include all activities that merely affect interstate commerce).

B. Existence of a Valid Agreement to Arbitrate

The Court's second task is to determine whether there exists a valid agreement to arbitrate. Standard Fruit, 937 F.2d at 476-78; see also Sanford v. MemberWorks, Inc., 483 F.3d 956, 962 (9th Cir. 2007). While the FAA expresses a strong public policy in favor of enforcing arbitration agreements, the Court must first establish that there is an

agreement to be enforced. Baker v. Osborne Dev. Corp., 159 Cal. App. 4th 884, 892 (2008). "[T]he question of whether a party is bound by an agreement containing an arbitration provision is a 'threshold question' for the court to decide." Microchip Tech. Inc. v. U.S. Philips Corp., 367 F.3d 1350, 1357 (Fed. Cir. 2004) (citing John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964)) (applying Ninth Circuit law). In determining whether an agreement to arbitrate exists, the district court "appl[ies] general state-law principles of contract interpretation, while giving due regard to the federal policy in favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of arbitration." Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1049 (9th Cir. 1996); see also Pokorny v. Quixtar, Inc., 601 F.3d 987, 994 (9th Cir. 2010).

Here, however, the Consumer Arbitration Agreement contains language providing that "[t]he Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement. . . ." ECF No. 5 at 15. This language is a "delegation provision"—"an agreement to arbitrate threshold issues concerning the arbitration agreement." Rent-A-Center, W., Inc., 130 S. Ct. at 2777. The Supreme Court has "recognized that parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." Id. (citing Howsam, 537 U.S. at 83-85; Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452 (2002) (plurality opinion)). "This line of cases merely reflects the principle that arbitration is a matter of contract." Id. (citing First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 943 (1995)). "An agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." Id. In Rent-A-Center, the Supreme Court found that a delegation provision "is valid under § 2 'save upon such grounds as exist at law or in equity for the revocation of any contract,' and federal courts can enforce the

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agreement by staying federal litigation under § 3 and compelling arbitration under § 4." Id. at 2778.

Plaintiff does not contest the validity of the delegation provision nor does she dispute the specific terms of the arbitration agreement. See, e.g., Opp'n, ECF No. 9 at 3.[3] Thus, the preliminary question of whether there exists a valid agreement to arbitrate is a gateway issue for the arbitrator(s), and not the Court, to decide.

C. Disputes Fall Within the Scope of the Agreement to Arbitrate

"In considering the scope of an arbitration clause's application, U.S. courts have recognized a distinction between 'broad' and 'narrow' language." Concat LP, 350 F. Supp. 2d at 807 (quoting Mediterranean Enterprises, Inc. v. Ssangyong Corp., 708 F.2d 1458, 1463-64 (9th Cir. 1983)). The rule is that, where an arbitration clause applies to matters "arising under" the agreement, its scope is narrowly defined, but where it applies to matters "arising out of or relating to" the agreement, its application should be broadly construed. Id. "[W]hen an arbitration clause refers to disputes or controversies 'under' or 'arising out of' the contract, arbitration is restricted to 'disputes and controversies relating to the interpretation of the contract and matters of performance.'" Mediterranean Enterprises, Inc., 708 F.2d at 1465.

Plaintiff opposes Defendant's Motion on the grounds that Defendant has not established that its repeated calls to Plaintiff were in any way related to the loan agreement and that the purported arbitration agreement does not encompass Plaintiff's tort-based TCPA claims for harassing telephone calls that were unrelated to the loan agreement. See generally Opp'n, ECF No. 9. Specifically, Plaintiff argues that "Defendant has not established that the reason it contacted Plaintiff was in any way related to the loan agreement. Defendant does not allege any reason for why it

[3] Although Plaintiff refers to the arbitration agreement as the "purported arbitration agreement," she does not attack its validity or enforceability, only its applicability to her claims. See, e.g., Opp'n, ECF No. 9 at 6 ("Plaintiff does not dispute that Plaintiff obtained a consumer loan with Defendant. Plaintiff does not dispute that the consumer loan was subject to an arbitration agreement, in which Plaintiff agreed that any and all claims, controversies, or disputes arising out of or related in any way to the loan agreement would be arbitrated. However, Defendant has not established that the reason it contacted Plaintiff was in any way related to the loan agreement.").

contacted Plaintiff. Without any explanation or evidentiary support, Defendant concludes that Plaintiff's claims are plainly within the scope of the arbitration agreement and that all Plaintiff's claims are arbitrable." Id. at 6. Plaintiff states that "there are any number of reasons why Defendant would have been contacting Plaintiff that had nothing to do with the consumer loan agreement" and therefore claims that "evidentiary discovery is necessary to determine the scope and purpose for Defendant['s] repeated telephone calls." Id. Plaintiff's objections fail for two reasons.

First, and most importantly, given that the delegation provision, supra, applies to questions regarding the "applicability" of the arbitration clause, the issue of whether the disputes fall within the scope of the agreement to arbitrate is also a gateway issue that the arbitrator(s), rather than the Court, must decide.

Second, even if the parties' agreement did not contain a delegation provision, Plaintiff is incorrect in her assertion that Defendant submitted no evidence establishing that "its purpose for constantly and continuously calling Plaintiff despite Plaintiff's repeated requests to stop were in some way arising out of or related in any way to the loan agreement." Opp'n, ECF No. 9 at 7. Defendant submitted an affidavit which states that "[Defendant] attempted to contact Plaintiff to discuss payments on the account." ECF No. 5 at 10. However, the Court need not even look to Defendant's moving papers and affidavit to reject Plaintiff's argument–Plaintiff's own Complaint contradicts her assertion. See, e.g., Compl., ECF No 1 at 3 ¶ 9 ("Within one year prior to the filing of this action, Defendant contacted Plaintiff to collect money . . . due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction, which qualifies as 'consumer debt'") (emphasis added); Id. at 5 ¶ 23 ("The natural and probable consequences of Defendant's conduct was to harass, oppress or abuse Plaintiff in connection with the collection of the alleged debt") (emphasis added). Therefore, even if Plaintiff contested the delegation provision, and she does not, Plaintiff's argument fails. See, e.g., Cayanan v. Citi Holdings, Inc., 928 F. Supp. 2d 1182, 1207 (S.D. Cal. 2013) (calls made to plaintiffs "because Plaintiffs had failed to make timely payments on their

accounts," "for the limited purpose of collecting money owed them," and "not ... for advertising, marketing, or other purposes unrelated to the accounts," were " 'related to' the delinquent credit accounts" and thus TCPA claims based on those calls were covered by Citi arbitration clause).

In accordance with the parties' contract, the Court must stay the litigation to permit the arbitrator(s) first to arbitrate these "gateway" issues, and then, if permissible, to arbitrate the substantive claims.

D. RFDCPA and the Right to a Jury Trial

Finally, Plaintiff argues that her RFDCPA claim specifically prohibits Plaintiff's waiver of rights to a jury trial. Plaintiff relies on Section 1788.33 which states that "[a]ny waiver of the provisions of this title is contrary to public policy, and is void and unenforceable." Cal. Civ. Code § 1788.33. Defendant disagrees with Plaintiff's interpretation of the RFDCPA. Reply, ECF No. 11 at 8-9. "The Court, however, does not need to resolve this issue because even if Plaintiff's interpretation is correct, the FAA preempts state law." Delgado v. Progress Fin. Co., 1:14-CV-00033-LJO, 2014 WL 1756282, at *6 (E.D. Cal. May 1, 2014); see AT&T Mobility LLC, 131 S. Ct. at 1747, (2011) ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA."); see also Allied–Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 281 (1995) ("What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause."). Accordingly, the Court orders the parties to arbitrate Plaintiff's RFDCPA claim.

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CONCLUSION

As set forth above,

1. Defendant's Motion to Compel Arbitration and Stay the Case, ECF No. 5, is GRANTED;

2. The litigation is STAYED in its entirety pending completion of the arbitration; and

3. Plaintiff and Defendant are ORDERED to submit a joint status report within sixty (60) days of the date this order is electronically filed, and additional joint status reports each sixty (60) days thereafter. Failure to do so may be grounds for sanctions and may result in the dismissal of this action with prejudice without further notice.

IT IS SO ORDERED.

Dated: July 22, 2014

MORRISON C. ENGLAND, JR, CHIEF JUDGE
UNITED STATES DISTRICT COURT