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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Raquel Rodriguez ,  
Plaintiff,  
v.  
Michael Sim,  
Defendant.

No. C 08-3982 JL

ORDER LIMITING SCOPE OF  
EVIDENTIARY HEARING RE: MOTION  
TO STAY ACTION AND COMPEL  
ARBITRATION

**Introduction**

Plaintiff Raquel Rodriguez filed a wrongful termination and employment discrimination claim pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, among other related claims, against her former employer, Defendant Michael Sim, the current owner of Eden Villa-San Francisco. In lieu of an Answer, Defendant moved to compel arbitration under the Federal Arbitration Act, 9 U.S.C. §§ 1-16, pursuant to an alleged arbitration agreement between the parties. Plaintiff then requested an evidentiary hearing to clarify certain material issues of fact.

The Federal Arbitration Act does not confer federal question jurisdiction under 28 U.S.C. § 1331; rather, there must be an independent basis for jurisdiction. 9 U.S.C. § 4; *Volt Info. Sciences, Inc. v. Bd. of Tr. of the Leland Stanford Junior Univ.*, 389 U.S. 468, 479 (1989). In this case, this Court has original jurisdiction over this matter pursuant to 28

1 U.S.C. § 1331 and § 1367, because the underlying claim, Plaintiff’s employment  
2 discrimination claim, arises under federal law. Additionally, all parties consented to this  
3 court’s jurisdiction as provided by 28 U.S.C. § 636 (c) and by N.D. Cal. Civ. R. 73.

#### 4 **Legal Analysis**

##### 5 **I. Standard for Compelling Arbitration**

6 “[A]rbitration is a matter of contract.” *Ingle v. Circuit City Stores, Inc.*, 328 F.3d  
7 1165, 1170 (9th Cir. 2003) (quoting *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*,  
8 363 U.S. 574, 582 (1960)). The Federal Arbitration Act provides that arbitration  
9 agreements generally “shall be valid, irrevocable and enforceable.” 9 U.S.C. § 2 (2002).  
10 However, when grounds “exist at law or in equity for the revocation of any contract,” courts  
11 may decline to enforce such agreements. 9 U.S.C. § 2; *Ingle*, 328 F.3d at 1170.

12 Generally applicable defenses to contract such as such as fraud, duress, or  
13 unconscionability, may be applied to invalidate arbitration agreements. *Doctor's Assoc.,*  
14 *Inc. v. Casarotto*, 17 U.S. 681, 687 (1996) (interpreting the language of 9 U.S.C. §2).  
15 Because of the strong policy favoring arbitration, doubts will be resolved in favor of the  
16 party moving to compel arbitration. *Moses H. Cone Mem. Hosp. v. Mercury Const., Corp.*,  
17 460 U.S. 1, 24 (1983).

18 To evaluate the validity of an arbitration agreement, federal courts “should apply  
19 ordinary state-law principles that govern the formation of contracts.” *First Options of*  
20 *Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

##### 21 **II. California Contract Law**

22 When a petition to compel arbitration, subject to the United States Arbitration Act, 9  
23 U.S.C. §§ 1-16, is filed and accompanied by prima facie evidence of a written arbitration  
24 agreement, the court itself must determine whether the agreement exists, Cal. Code Civ. P.  
25 §§ 1281.2, 1290.2, and if any defense to its enforcement is raised, whether it is  
26 enforceable, *Rosenthal v. Great W. Fin. Sec. Corp.*, 14 Cal. 4th 394 (Cal. 1996). A petition  
27 to compel arbitration is in essence a suit in equity to compel specific performance of a  
28 contract. *Id.* Where there are sharply contrasting factual accounts, the better course is for

1 the trial court to hear oral testimony and allow the parties the opportunity for  
2 cross-examination. *Rosenthal v. Great Western Fin. Securities. Corp.*, 14 Cal 4th. 394 (Cal.  
3 1996).

4 In this case, Defendants proffer evidence of a written arbitration agreement. As  
5 Plaintiff alleges that she did not knowingly consent to the agreement to arbitrate, there is an  
6 issue as to whether a valid agreement was formed. Plaintiff has also raised the defense of  
7 unconscionability, a valid defense to contract under California law, *see Armendariz v.*  
8 *Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83 (Cal. 2000).

9 Defendant, on the other hand, contends that the primary issue is whether Plaintiff  
10 was defrauded into signing the arbitration agreement. Fraud is a generally applicable  
11 defense to contract. Cal. Civ. Code § 1689 (2008). California law distinguishes between  
12 fraud in the "inception" of a contract and fraud in the "inducement" of a contract.  
13 *Rosenthal*, 14 Cal. 4th at 415. Where a party's apparent assent to a written contract is  
14 negated by fraud in the inception, no arbitration agreement was formed. *Id.* at 417. Fraud  
15 in the inception is an issue for the trial court, whereas fraud in the inducement - where a  
16 party intends to assent to an agreement but there is some other misrepresentation - is an  
17 issue for arbitration rather than for the court, because there exists intent to enter into an  
18 agreement. *Id.* at 415. Here, because Rodriguez argues that "she never even knew that  
19 what she was signing was even a contract," it appears that she alleges fraud in the  
20 inception, which is a proper issue for the court to decide.

### 21 **Conclusion and Order**

22 This Court has considered the Motion to Stay Action and Compel Arbitration (Docket  
23 Number 11) by Defendant Michael Sim. After careful consideration of the moving and  
24 opposing papers, the Court hereby orders that the evidentiary hearing be limited to evidence  
25 relevant to those material issues of fact that directly relate to the existence and validity of the  
26 alleged arbitration agreement. This Court has denied the following issues raised by the  
27 parties' briefs:

28 1. Was there an agreement to arbitrate? The Court seeks any evidence of Plaintiff's

1 assent to the arbitration provision, including testimony as to whether Plaintiff was aware of  
2 the provision, either because of the nature of the form, or because of what was  
3 communicated to Plaintiff, or both. Evidence may also include testimony as to the  
4 authenticity of the location and the date, which Plaintiff argues is not in her handwriting.

5       2. Was Plaintiff defrauded into signing the alleged arbitration agreement? The Court  
6 seeks evidence of Plaintiff's English language skills and evidence of notice to Defendant or  
7 Harlyta Rabor regarding Rodriguez's language abilities, whether it be express or implied in  
8 the nature of their working relationship. The Court also requests testimony regarding the  
9 circumstances under which the arbitration agreement was signed, including what, if  
10 anything, Plaintiff knew about the arbitration provision, and how she acquired that  
11 knowledge.

12       3. Was the agreement unconscionable because it was a contract of adhesion? The  
13 Court seeks any evidence that the agreement was coercive (i.e., offered on a "take it or  
14 leave it" basis) or alternatively, evidence that it was a product of arms-length dealing.  
15 Evidence may include testimony as to the circumstances surrounding the signing of the  
16 agreement, any mutual benefits flowing from the agreement that are not apparent on the  
17 face of the agreement, and the rate of employee acceptance of the arbitration agreement.  
18 Additionally, the Court seeks evidence regarding the general procedure used to distribute  
19 the employee manual that contained the arbitration provision, as well as the specific  
20 procedure used to distribute the manual to Plaintiff.

21       This Court hereby orders the parties to stipulate to a new hearing date on or after  
22 January 21, 2009, at 9:30 a.m.

23       IT IS SO ORDERED.

24       DATED: December 5, 2008

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27 \_\_\_\_\_  
28 James Larson  
Chief Magistrate Judge

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