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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALANA KASELITZ, et al.,  
Plaintiffs,  
v.  
HISOFT TECHNOLOGY INTERNATIONAL,  
LTD., et al.,  
Defendants.

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No. C-12-5760 MMC

**ORDER GRANTING DEFENDANT  
HISOFT TECHNOLOGY  
INTERNATIONAL, INC.'S MOTION TO  
DISMISS OR STAY CLAIMS; STAYING  
CLAIMS AGAINST DEFENDANT HISOFT  
TECHNOLOGY; DIRECTIONS TO  
PARTIES**

Before the Court is defendant hiSoft Technology International, Ltd.'s ("hiSoft Technology") Motion to Dismiss or Stay Claims, filed November 19, 2012, by which hiSoft Technology seeks to compel arbitration of the claims alleged against it. Plaintiffs Alana Kaselitz and Melissa Kaselitz have filed opposition, to which hiSoft Technology has replied. Plaintiffs, with leave of court, have filed a surreply. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.<sup>1</sup>

**BACKGROUND**

Plaintiffs make the following factual allegations in their complaint.

In 2004, plaintiffs founded Echo Lane, a "business-consulting firm." (See Compl. ¶ 10.) In 2009, Echo Lane was "engaged in supporting hiSoft in a sales cycle," and, during the course of said engagement, "hiSoft approached the [p]laintiffs to determine if they were

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<sup>1</sup>By order filed February 6, 2013, the Court took the matter under submission.

1 interested in [Echo Lane] being acquired by hiSoft.” (See Compl. ¶ 16-17.)<sup>2</sup> Thereafter,  
2 plaintiffs expressed interest in an acquisition and began “negotiations over the key terms.”  
3 (See Compl. ¶ 17.)

4 In January 2010, plaintiffs, Echo Lane and hiSoft Technology entered into a “Stock  
5 Purchase Agreement” (“SPA”), which agreement sets forth the terms of hiSoft  
6 Technology’s acquisition of Echo Lane. (See Compl. ¶ 28, Ex. B.) Specifically, under the  
7 SPA, hiSoft Technology agreed to provide plaintiffs certain stock (see Compl. ¶ 31), as well  
8 as the sum of \$3,085,500, payable in two installments (see Compl. ¶ 30). The first cash  
9 payment, the “First Tranche Cash Consideration,” is described as a “cash payment of  
10 \$1,155,000 made at the closing, subject to adjustment in the event Echo Lane’s Net  
11 Current Assets as of December 31, 2009 was less than \$500,000.” (See Compl. ¶ 30.)  
12 The second payment, the “Second Tranche Cash Consideration,” is described as a “cash  
13 payment of \$1,930,500, subject to adjustment depending upon the amount of Echo Lane’s  
14 actual gross profit during Fiscal Year 2011, made no later than April 14, 2012.” (See  
15 Compl. ¶ 30.)

16 The SPA also includes a clause contemplating each said plaintiff’s future  
17 employment; specifically, the SPA provides that each plaintiff “shall enter into a three-year  
18 employment agreement with Buyer,”<sup>3</sup> although “Buyer shall have the right to terminate the  
19 employment of either of the [plaintiffs] with or without Cause.” (See Compl. Ex. B § 6.4.)  
20 The SPA further provides that the employment agreements “shall provide for an annual  
21 compensation package that is in line with Buyer’s current compensation structure in the  
22 United States, and shall contain such other terms and conditions as may be agreed upon  
23 by the parties.” (See *id.*)

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24  
25 <sup>2</sup>As discussed below, Echo Lane was acquired by hiSoft Technology, a named  
26 defendant, and plaintiffs were employed by hiSoft Envisage, Inc., which entity is not a  
27 defendant. Plaintiffs, however, refer throughout their complaint to both hiSoft Technology  
28 and hiSoft Envisage, Inc. as “hiSoft.” Unless the particular “hiSoft” entity to which plaintiffs  
are referring is clear from the context in which such reference appears, the Court will refer  
to such entity as “hiSoft.”

<sup>3</sup>The SPA defines “Buyer” as hiSoft Technology. (See Compl. Ex. B at 1.)

1 On March 22, 2010, plaintiffs and hiSoft Technology entered into an “amended  
2 Stock Purchase Agreement”(“Amended SPA”) in which they clarified the manner by which  
3 Echo Lane’s gross profits for 2011 were to be calculated. (See Compl. ¶¶ 38, 39.)

4 Plaintiffs allege they agreed to sign the SPA and the Amended SPA in reliance on  
5 statements made to them by Tiak Koon Loh (“Loh”),<sup>4</sup> the “Chief Executive Officer of hiSoft”  
6 (see Compl. ¶ 4), and by Gene Tsai (“Tsai”), the Senior Vice President of hiSoft Envisage  
7 Inc. (“hiSoft Envisage”) (see Compl. Ex. D), during the above-referenced negotiations (see  
8 Compl. ¶¶ 17-18, 26). Such statements included assurances that “hiSoft had the  
9 necessary [ ] contacts, additional sales personnel and off-shore support team in place to  
10 allow [p]laintiffs to achieve the gross profit targets being imposed” (see Compl. ¶ 21), that  
11 “hiSoft had an off-shore team already in place who had strong English speaking skills, were  
12 skilled consultants, and would be able to support United States and international  
13 customers” (see Compl. ¶ 24), and that “plaintiffs “would have control over the Echo Lane  
14 budget and team and that it would be operated as its own business unit within hiSoft” (see  
15 Compl. ¶ 25).

16 On April 6, 2010, hiSoft Technology paid plaintiffs the First Tranche Cash  
17 Consideration. (See Compl. ¶ 46.)

18 On April 28, 2010, Tsai offered each plaintiff employment with hiSoft Envisage in the  
19 position of “VP, Cloud Solutions”; each plaintiff accepted the offer. (See Compl. ¶¶ 43, 44,  
20 Exs. D, F.) According to plaintiffs, during the course of their employment, “[p]laintiffs faced  
21 numerous obstacles that were created or allowed to continue by hiSoft, all of which  
22 substantially interfered with [p]laintiffs’ ability to generate the level of revenue and gross  
23 profit they otherwise would have generated had they been able to operate Echo Lane as an  
24 independent business with full control over its budget and personnel.” (See Compl.  
25 ¶ 47.) In particular, plaintiffs allege, “hiSoft interfered with and disrupted [p]laintiffs’ efforts  
26 to exceed their gross profit target . . . by,” inter alia: “depriv[ing] [p]laintiffs of control over  
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28 <sup>4</sup>Loh is a named defendant; to date, he has not appeared.

1 [Echo Lane's] budget, business priorities and personnel," failing to make "capital injections,"  
2 not having an "offshore team in place with strong English skills who were also skilled  
3 consultants," not having a "team of 15 or more sales people who would be actively selling  
4 Cloud solutions and services," "prevent[ing] [p]laintiffs from bidding or selling key deals  
5 after all pre-sales work and proposals were completed by [p]laintiffs," "prevent[ing]  
6 [p]laintiffs from hiring sales personnel in China," "fail[ing] to support [p]laintiffs in  
7 collaborating actively with the China Business Unit," "fail[ing] to introduce [p]laintiffs to any  
8 meaningful customers and contacts they have in China," "prevent[ing] [p]laintiffs from  
9 developing a strong presence in Japan within their control by refusing to provide the  
10 necessary support for [p]laintiffs' personnel," "prevent[ing] [p]laintiffs from controlling sales  
11 cycles and contract bidding processes in Japan," and taking away plaintiffs' "key personnel  
12 . . . for use by other hiSoft businesses." (See Compl. ¶¶ 48, 48a.-48k.)

13         Additionally, plaintiffs allege that after "hiSoft" acquired a company known as  
14 "NouvEon Technology Partners, Inc." ("NouvEon") in July 2011, plaintiffs "lost further  
15 control over budget and personnel" and "all Echo Lane personnel" were required to report  
16 to "NouvEon management." (See Compl. ¶¶ 48.l-48.m.) Moreover, according to plaintiffs,  
17 "in order to provide support to . . . the NouvEon group, Loh and hiSoft decided to attempt to  
18 force [p]laintiffs to resign from hiSoft" (see Compl. ¶ 50); specifically, on December 23,  
19 2011, "[p]laintiffs were presented with a new 'offer letter'" that included a "demotion and  
20 salary reduction" (see Compl. ¶ 51). Plaintiffs "refused to agree to these changes," and,  
21 plaintiffs allege, "hiSoft" then "elected to terminate [p]laintiffs' employment as of February 1,  
22 2012." (See Compl. ¶¶ 51, 52.) Thereafter, on February 20, 2012, "hiSoft notified  
23 [p]laintiffs via email regarding its calculation of the purported results of Echo Lane's  
24 performance in 2011," and, in particular, stated "[p]laintiffs were not entitled to receive any  
25 portion of the Second Tranche Cash Consideration." (See Compl. ¶ 52.) In response,  
26 plaintiffs objected to the calculations made by "hiSoft" (see Compl. ¶ 54), "identified various  
27 inaccuracies" in the calculations (id.), "requested that hiSoft provide the backup details  
28 underlying hiSoft's calculations" (id.), and requested "audited financial data" (see Compl.

1 ¶ 55.) According to plaintiffs, “hiSoft” refused to provide them the requested backup data  
2 and refused to complete an “independent audit of Echo Lane’s FY2011 financials.” (See  
3 Compl. ¶ 55.)

4 Based on the above factual allegations, plaintiffs allege six causes of action.

5 In the First Cause of Action, titled “Breach of Contract,” plaintiffs allege that hiSoft  
6 Technology, by failing to provide plaintiffs with sufficient “financial and personnel resources”  
7 during their employment, employing other practices that “interfered with and inhibited  
8 [p]laintiffs’ ability to achieve and exceed” sales targets, failing to “properly calculate and  
9 pay” Echo Lane’s revenues, and failing to complete an audit of Echo Lane (see Compl. ¶  
10 63), engaged in “breaches of the SPA and the implied covenant of good faith and fair  
11 dealing” (see Compl. ¶ 65).

12 In the Second Cause of Action, titled “Wrongful Termination,” plaintiffs allege that  
13 hiSoft Technology breached the SPA and Amended SPA by terminating their employment  
14 without cause, which termination resulted in plaintiffs not receiving “the full amount of  
15 compensation to which they are entitled.” (See Compl. ¶ 69.)

16 In the Third Cause of Action, titled “Fraud-Intentional Misrepresentation,” plaintiffs  
17 allege Loh and Tsai, “[d]uring the course of the negotiations leading to the SPA and  
18 Amended SPA,” made numerous statements about circumstances pertaining to plaintiffs’  
19 future employment and other interaction with “hiSoft,” e.g., that “hiSoft had an offshore  
20 team already in place who had strong English skills” (see Compl. ¶ 75); plaintiffs further  
21 allege such statements were knowingly false (see Compl. ¶¶ 76, 77), and were made with  
22 the “intent of inducing [p]laintiffs to enter into the SPA and Amended SPA (see Compl.  
23 ¶ 78).

24 In the Fourth Cause of Action, titled “Fraud - Nondisclosure,” plaintiffs allege Loh  
25 and Tsai “failed to fully disclose” certain facts regarding the circumstances of plaintiffs’  
26 future employment and other interaction with “hiSoft,” e.g., that “hiSoft never intended to  
27 allow Echo Lane to be operated as a separate business unit” (see Compl. ¶ 86), and did so  
28 to “induce [p]laintiffs to enter into the SPA and the Amended SPA” (see Compl. ¶ 87).

1 In the Fifth Cause of Action, titled “Fraud - Negligent Misrepresentation,” plaintiffs  
2 rely on the same allegedly false statements identified in the Third Cause of Action (see  
3 Compl. ¶¶ 93, 94), and allege such false statements were made in breach of “duties to  
4 [p]laintiffs to provide them with truthful information concerning the material aspects of the  
5 transaction and hiSoft’s operational and financial systems and support personnel” (see  
6 Compl. ¶ 92).

7 In the Sixth Cause of Action, titled “Accounting,” plaintiffs allege they are entitled to a  
8 “full accounting of the hours and attributable revenue and gross profit generated through  
9 any and all efforts led and driven by [p]laintiffs and their team during Fiscal Year 2011.”  
10 (See Compl. ¶ 103.)

## 11 DISCUSSION

12 By the instant motion, hiSoft Technology seeks to compel plaintiffs to arbitrate their  
13 claims against hiSoft Technology, based on an arbitration provision contained in each  
14 plaintiff’s employment agreement with hiSoft Envisage.

15 “In determining whether parties have agreed to arbitrate a dispute, [courts] apply  
16 general state-law principles of contract interpretation, while giving due regard to the federal  
17 policy in favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of  
18 arbitration.” Mundi v. Union Security Life Ins. Co., 555 F.3d 1042, 1044 (9th Cir. 2009)  
19 (internal quotation and citation omitted). Where the “face of the contract [ ] indicates the  
20 dispute is [ ] within the scope of the arbitration provision,” a “presumption in favor of  
21 arbitration” applies. See id. at 1044-45. “If contractual language is clear and explicit, it  
22 governs.” See In re Tobacco Cases I, 124 Cal. App. 4th 1095, 1104 (2005).

### 23 A. Scope of Arbitration Provision

24 The subject arbitration provision reads, in relevant part, as follows:<sup>5</sup>

25 In consideration of my employment with the Company, its promise to arbitrate all  
26 employment-related disputes, and my receipt of the compensation, pay raises and  
27 other benefits paid to me by the Company, at present and in the future, I agree that

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28 <sup>5</sup>In the employment agreements, the entirety of the arbitration provision is set forth in capital letters.

1 any and all controversies, claims, or disputes with anyone (including the Company  
2 and any employee, officer, director, shareholder or benefit plan of the company in  
3 their capacity as such or otherwise), whether brought on an individual, group, or  
4 class basis, arising out of, relating to, or resulting from my employment with the  
5 Company or the termination of my employment with the Company, including any  
breach of this agreement, shall be subject to binding arbitration under the arbitration  
rules set forth in California Code of Civil Procedure Section 1280 through 1294.2,  
including section 1283.05 (the “Rules”) and pursuant to California law.

6 (See Decl. A. Kaselitz, filed December 8, 2012, Ex. A ¶ 12.A.)<sup>6</sup>

7 As expressly provided in the above-quoted provision, plaintiffs agreed to arbitrate  
8 any claim “arising out of, relating to, or resulting from [their] employment.” (See id.)  
9 Plaintiffs argue that their claims against hiSoft Technology do not arise out of or relate to  
10 their employment. For the reasons discussed below, the Court disagrees. In particular,  
11 the Court finds each of the claims against hiSoft Technology relates to plaintiffs’  
12 employment with hiSoft Envisage and, consequently, falls within the scope of the  
13 arbitration provision.

14 Plaintiffs, as noted, allege they negotiated the terms of the SPA, as well as the  
15 Amended SPA, with both an executive of hiSoft Envisage and an executive of hiSoft  
16 Technology. Under the SPA and Amended SPA, the parties thereto agreed hiSoft  
17 Technology would acquire Echo Lane from plaintiffs for certain specified consideration.  
18 The consideration to which plaintiffs ultimately would be entitled for the sale of Echo Lane  
19 was, in large part, dependent on the gross revenue Echo Lane would earn during the fiscal  
20 year 2011, with the further understanding that plaintiffs would stay on to run Echo Lane as  
21 employees of hiSoft Technology and would enter into employment agreements thereafter.  
22 Shortly thereafter, hiSoft Envisage offered each plaintiff employment as a vice president,  
23 and each plaintiff accepted that offer. In short, the parties’ negotiations and agreements as  
24 to the purchase of Echo Lane by hiSoft Technology are inextricably intertwined with  
25 plaintiffs’ employment agreements with hiSoft Envisage.

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27 <sup>6</sup>With the exception of the plaintiff’s name, the subject employment agreements are  
28 identical. For convenience, the Court will cite to the employment agreement signed by  
Alana Kaselitz.

1 Of equal if not greater importance, plaintiffs' claims are based, in essence, on their  
2 allegations that, contrary to promises made to them by executives of hiSoft Envisage and  
3 hiSoft Technology during the above-referenced negotiations, plaintiffs were not provided  
4 with necessary budget control, support and personnel during the course of their  
5 employment with hiSoft Envisage. As a result of said failures, plaintiffs allege, they were  
6 unable to meet the goals set forth in the SPA that, if met, would have entitled them to  
7 additional consideration for their sale of Echo Lane.<sup>7</sup> Although plaintiffs allege it is hiSoft  
8 Technology, as opposed to hiSoft Envisage, that owes plaintiffs damages in light of  
9 plaintiffs' inability to earn such additional consideration, a determination of whether plaintiffs  
10 met their goals and, if not, who was responsible for such failure, necessarily will require a  
11 detailed review of plaintiffs' interactions with hiSoft Envisage, including its officers and staff,  
12 as well as with its customers, during the course of plaintiffs' employment with hiSoft  
13 Envisage.

14 In sum, plaintiffs' claims "relate to" their employment agreements. See Chiron Corp.  
15 v. Ortho Diagnostic Systems, Inc., 207 F.3d 1126, 1131 (9th Cir. 2000) (holding arbitration  
16 provision requiring arbitration of any dispute "relating to" agreement is "broad and far  
17 reaching").

18 Plaintiffs next argue the parties, by entering into the SPA, agreed any claims they  
19 might have against one another would not be subject to arbitration. In support thereof,  
20 plaintiffs rely on a section of the SPA titled "Governing Law and Jurisdiction," which states  
21 as follows:

22 This Agreement shall be governed by and construed in accordance with the  
23 laws of the State of California, regardless of the laws that might otherwise  
24 govern under applicable principles of conflicts of laws thereof. The parties  
25 [plaintiffs, Echo Lane, and hiSoft Technology] agree to submit to the exclusive  
26 jurisdiction of the federal or California courts located in the City and County of  
27 San Francisco.

28 (See Compl. Ex. B ¶ 11.6.)

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<sup>7</sup>Plaintiffs alternatively allege the results of an accounting may demonstrate they in fact met their contractual goals.

1 As discussed above, the negotiations pertaining to and plaintiffs' execution of  
2 employment agreements were, as contemplated in the SPA, events that would occur at a  
3 later time, and the parties to the SPA expressed their mutual understanding that those  
4 employment agreements would contain, in addition to any provisions pertaining to  
5 compensation, "such other terms and conditions as may be agreed upon by the parties."  
6 (See Compl. Ex. B ¶ 6.4.) Consequently, nothing in the SPA precluded the parties from  
7 later agreeing to arbitrate claims relating to plaintiffs' employment. To the extent the SPA  
8 has any bearing on the subject of arbitration, it does no more than require any dispute  
9 regarding enforcement of an arbitration clause to be heard, as here, in California and  
10 governed by California law.

#### 11 **B. hiSoft Technology's Standing**

12 Plaintiffs argue that, notwithstanding their broadly worded promise to arbitrate their  
13 claims, hiSoft Technology lacks standing to enforce the arbitration provision, for the  
14 asserted reason that hiSoft Technology is not a party to the employment agreements. The  
15 Court disagrees.

16 At the outset, the Court notes the employment agreements are between each  
17 plaintiff and "the Company," which term is defined in the employment agreements as  
18 "hiSoft Envisage, its subsidiaries, affiliates, successors or assigns." (See Decl. A. Kaselitz,  
19 filed December 8, 2012, Ex. A at 1.) Consequently, on its face, the employment  
20 agreements' definition of "the Company" encompasses entities other than hiSoft Envisage,  
21 including affiliates thereof. As hiSoft Technology points out, hiSoft Technology falls within  
22 the definition of "the Company," because, under the California Corporations Code, a  
23 "parent" of a corporation is an "affiliate" of such corporation, see Cal. Corp. Code §§ 150,  
24 175,<sup>8</sup> and hiSoft Envisage is a "wholly-owned subsidiary of hiSoft Technology" (see Litster  
25 Decl. ¶ 2); see also Black's Law Dictionary 67 (9th ed. 2009) (defining "affiliate" as

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27 <sup>8</sup>As set forth expressly therein, the employment agreements are "governed by the  
28 laws of the State of California without giving effect to any choice of law rules or principles  
that may result in the application of the laws of any jurisdiction other than California." (See  
Decl. A. Kaselitz Ex. A ¶ 13.A.)

1 “corporation that is related to another corporation by shareholdings or other means of  
2 control; a subsidiary, parent, or sibling corporation”). Plaintiffs contend, without further  
3 elaboration, that “the California Corporations Code definitions of ‘affiliate’ and ‘parent’ . . .  
4 do not govern this Court’s interpretation of the [a]rbitration [a]greements.” (See Pls.’  
5 Surreply at 3:10-13.) Plaintiffs, however, cite to no other interpretation of those terms, let  
6 alone suggest a “reasonable” alternative interpretation. See Muzzi v. Bel Air Mart, 171 Cal.  
7 App. 4th 456, 462-63 (2009) (holding contractual term is “considered ambiguous when it is  
8 capable of two or more constructions, both of which are reasonable”) (internal quotation  
9 and citation omitted).

10 Accordingly, the Court finds hiSoft Technology is a party to the employment  
11 agreements, and, consequently, can enforce the arbitration provisions therein.

12 Moreover, assuming, arguendo, hiSoft Technology is not an entity encompassed  
13 within the definition of “the Company,” a nonsignatory to an agreement may nonetheless  
14 enforce an arbitration provision included therein where any one of a number of contract or  
15 agency principles is applicable. See Mundi, 555 F.3d at 1046. Under one form of  
16 “equitable estoppel,” for example, a signatory to an agreement containing an arbitration  
17 provision may be compelled to arbitrate its claims against a nonsignatory where the plaintiff  
18 signatory “alleges substantially interdependent and concerted misconduct by the  
19 nonsignatory and another signatory and the allegations of interdependent misconduct are  
20 founded in or intimately connected with the obligations of the underlying agreement.” See  
21 Kramer v. Toyota Motor Co., — F.3d — , 2013 WL 357792, \*5 (2013) (internal quotation  
22 and citation omitted).

23 Here, plaintiffs’ complaint alleges that officers of hiSoft Envisage and hiSoft  
24 Techology jointly negotiated the acquisition of Echo Lane and made the false promises that  
25 assertedly induced plaintiffs not only to sell Echo Lane but also to agree to the manner in  
26 which they would be compensated in their future contemplated employment. Indeed, the  
27 provision in the SPA contemplating plaintiffs’ future employment with “Buyer” was  
28 apparently satisfied by plaintiffs’ entering into employment agreements with hiSoft

1 Envisage. Equally, if not more important, plaintiffs seek damages from hiSoft Technology  
2 based primarily on conduct on the part of hiSoft Envisage, specifically, hiSoft Envisage's  
3 alleged failure to provide plaintiffs with the support necessary to enable plaintiffs to meet  
4 their goals during the course of plaintiffs' employment.

5 Under such circumstances, and provided the subject arbitration provision is valid  
6 and enforceable, the Court finds hiSoft Technology is entitled to enforce said arbitration  
7 provision.

### 8 **C. Unconscionability**

9 Plaintiffs argue the arbitration provision is unconscionable, and, consequently, is  
10 invalid and unenforceable.

11 An arbitration provision may be invalidated under "generally applicable contract  
12 defenses," such as "unconscionability." See AT&T Mobility LLC v. Concepcion, 131 S. Ct.  
13 1740, 1746 (2011). "Under California law, courts may refuse to enforce any contract found  
14 to have been unconscionable at the time it was made, or may limit the application of any  
15 unconscionable clause." Id. (internal quotation and citation omitted). "A finding of  
16 unconscionability requires a procedural and a substantive element, the former focusing on  
17 oppression or surprise due to unequal bargaining power, the latter on overly harsh or  
18 one-sided results." Id. (internal quotation and citation omitted).

19 With respect to the latter of the two elements, plaintiffs argue the subject arbitration  
20 provision is substantively unconscionable because the employment agreements were not  
21 signed by an agent of hiSoft Envisage. In support thereof, plaintiffs cite to the principle that  
22 an arbitration provision that requires one party, but not the other, to arbitrate claims is  
23 substantively unconscionable. See, e.g., Armendariz v. Foundation Health Psychcare  
24 Servs., Inc., 24 Cal. 4th 83, 120-21 (2000) (finding arbitration clause "unconscionabl[y] one-  
25 sided," where clause required employee but not employer to arbitrate claims). The Court is  
26 not persuaded.

27 First, to the extent plaintiffs are suggesting hiSoft Envisage is not in any manner  
28 bound by the employment agreements, the Court disagrees. Plaintiffs acknowledge hiSoft

1 Envisage made the offers of employment, as set forth in the employment agreements, and  
2 that plaintiffs subsequently agreed to accept said offers without any changes. (See Compl.  
3 ¶ 42, Ex. D; Alana Kaselitz Decl., filed December 8, 2012, ¶ 7, Ex. A (employment  
4 agreement).) Upon plaintiffs' acceptance of the offer, a binding contract was formed as a  
5 matter of law. See *Donovan v. RRL Corp.*, 26 Cal. 4th 261, 270-71 (2001) (noting "[a]n  
6 essential element of any contract is the consent of the parties, or mutual assent"; further  
7 noting "[m]utual assent is normally manifested by an offer communicated to the offeree  
8 and an acceptance communicated to the offeror"). Second, contrary to plaintiffs' assertion,  
9 the employment agreements require both hiSoft Envisage and plaintiffs to arbitrate all  
10 covered claims. In particular, each plaintiff's agreement to arbitrate is made, inter alia, "[i]n  
11 consideration of [her] employment with the Company" and "its promise to arbitrate all  
12 employment-related disputes" (see Alana Kaselitz Decl. Ex. A ¶ 12.A); each plaintiff also  
13 acknowledged therein her "understand[ing] that this agreement to arbitrate also applies to  
14 any disputes that the Company may have with [her]." (See id.) Consequently, plaintiffs  
15 have failed to show the arbitration provision is substantively unconscionable.<sup>9</sup>

16 Accordingly, the Court finds the subject arbitration provision is valid and  
17 enforceable.

### 18 **E. Stay of Proceedings Against hiSoft Technology**

19 Under both federal and state law, where, as here, a court has found a plaintiff's  
20 claims to be subject to arbitration, the court must stay the action pending completion of the  
21 arbitration proceedings. See 9 U.S.C. § 3 (providing, where "suit or proceeding" is  
22 "referrable to arbitration," court "shall on application of one of the parties stay the trial of the  
23 action until such arbitration has been had in accordance with the terms of the agreement");  
24 Cal. Civ. Proc. Code § 1281.4 (providing, where "a court . . . has ordered arbitration of a  
25 controversy which is an issue involved in an action or proceeding pending before [the]  
26 court, . . . [such court] shall, upon motion of a party to such action or proceeding, stay the

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28 <sup>9</sup>In light of this finding, the Court does not address herein the issue of whether the  
arbitration provision is procedurally unconscionable.

1 action or proceeding until an arbitration is had . . .”).

2 Accordingly, the Court having found plaintiffs’ claims against hiSoft Technology are  
3 subject to arbitration, plaintiffs’ claims against hiSoft Technology will be stayed until the  
4 arbitration has been conducted in accordance with the terms set forth in the arbitration  
5 provision.<sup>10</sup>

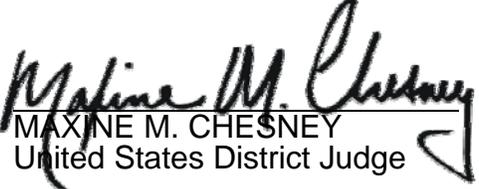
6 **CONCLUSION**

7 For the reasons stated above, hiSoft Technology’s motion to compel arbitration is  
8 hereby GRANTED, and plaintiffs’ claims against hiSoft Technology are hereby STAYED  
9 pending completion of arbitration proceedings.

10 Plaintiffs and hiSoft Technology are hereby DIRECTED to file, no later than August  
11 9, 2013, a Joint Status Report, apprising the Court of the status of the arbitration  
12 proceedings.

13 **IT IS SO ORDERED.**

14  
15 Dated: February 15, 2013

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17 MAXINE M. CHESNEY  
18 United States District Judge

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<sup>10</sup>The stay does not apply to plaintiffs’ claims against Loh, who, as noted, has not, to date, appeared.