

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FALCONPOINT UNLIMITED, LLC,  
Plaintiff,  
v.  
KEVIN J. SENN, et al.,  
Defendants.

Case No.14-cv-02342-NC

**ORDER FOR ADDITIONAL  
BRIEFING RE: ARBITRATION**

The Court has reviewed the parties’ briefing on Falconpoint’s motion for partial summary judgment. Paragraph 10 of the contract between the parties provides that any dispute between the parties as to whether there has been a breach of the contract “will be submitted to binding commercial arbitration.” “A bedrock principle of California contract law is that he who seeks to enforce a contract must show that he has complied with the conditions and agreements of the contract on his part to be performed.” Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1121-22 (9th Cir. 2008); Brennan v. Opus Bank, et. al., No. 13-35580, \*11 (9th Cir. Aug. 11, 2015); see also Local 659, I.A.T.S.E. v. Color Corp. of Am., 47 Cal.2d 189, 302 P.2d 294, 299 (1956) (En Banc). The parties have not addressed this contract provision in their summary judgment papers, or at any other time during the litigation. The Court finds the arbitration clause relevant to the disposition of the summary judgment motion.

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Therefore, Falconpoint must explain why the Court should not find that it has repudiated the contract by filing suit in federal court and not submitting the breach claims to arbitration, thereby violating the binding arbitration clause. If Falconpoint believes that there has been a waiver of the arbitration clause, it must present evidence to the Court of such waiver.

Falconpoint must provide the additional briefing by August 19, 2015. Defendants may respond by August 26, 2015.

**IT IS SO ORDERED.**

Dated: August 12, 2015

  
NATHANAEL M. COUSINS  
United States Magistrate Judge