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

ANN LEMBERG,

Plaintiff,

v.

SAN FRANCISCO OPERA
ASSOCIATION,

Defendant.

Case No. [17-cv-06641-MMC](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS; VACATING HEARING DATE;
STAYING ACTION PENDING
ARBITRATION; CONDITIONALLY
CLOSING CASE**

Re: Dkt. No. 20

Before the Court is defendant San Francisco Opera Association's Motion to Dismiss, filed December 20, 2017, pursuant to Rules 12(b)(1), (b)(3), and (b)(6) of the Federal Rules of Civil Procedure. Plaintiff Ann Lemberg has filed opposition, to which defendant has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter appropriate for determination on the parties' respective written submissions, hereby VACATES the hearing scheduled for January 26, 2018, and rules as follows.

For the reasons stated by defendant, the Court finds plaintiff's claims are subject to an arbitration provision contained in the "Submission Release and Waiver" entered into by the parties on January 26, 2017. See Geier v. m-Qube Inc., 824 F.3d 797, 799 (9th Cir. 2016) (holding "federal district courts must compel arbitration if (1) a valid agreement to arbitrate exists and (2) the dispute falls within the scope of that agreement").

Although, in moving under Rule 12(b)(1), defendant does not expressly seek an order compelling arbitration, the Court construes such motion as a petition to compel arbitration pursuant to the Federal Arbitration Act ("FAA"). See 9 U.S.C. §§ 3, 4; see

1 also, e.g., Figuerola Peruvians, L.L.C. v. N. Am. Peruvian Horse Ass'n, No. 09-CV-
2 04511-MMM, 2009 WL 10673941, at *4, *9 (C.D. Cal. Dec. 18, 2009) (construing Rule
3 12(b)(1) motion to dismiss as petition to compel arbitration, denying motion to dismiss,
4 and staying action pending arbitration proceedings) (collecting cases).

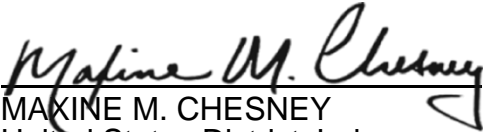
5 Accordingly, defendant's motion is hereby GRANTED in part and DENIED in part,
6 as follows:

- 7 1. To the extent defendant seeks to compel arbitration, the motion is hereby
8 GRANTED, and the instant action is hereby STAYED pending arbitration, pursuant
9 to § 3 of the FAA.
- 10 2. To the extent defendant seeks dismissal of the instant action, the motion is
11 hereby DENIED.

12 Lastly, in light of the above-referenced stay, it is hereby ORDERED that the case
13 be CLOSED for statistical purposes only. Should further proceedings therein become
14 necessary, either party may initiate such proceedings in the same manner as if the case
15 had not been statistically closed.

16 **IT IS SO ORDERED.**

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18 Dated: January 19, 2018


MAXINE M. CHESNEY
United States District Judge

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