

United States District Court  
For the Northern District of California

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

LANCE DELMORE,  
Plaintiff,  
v.  
RICOH AMERICAS CORPORATION and DOES  
1-10,  
Defendants.

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No. C 09-03378 CW  
ORDER GRANTING  
MOTION TO COMPEL  
ARBITRATION AND TO  
STAY PROCEEDINGS

Defendant Ricoh Americas Corporation moves to compel arbitration of Plaintiff Lance Delmore's claims against it and to stay the action pending the conclusion of arbitration. Delmore opposes the motion. Having considered all of the papers filed by the parties, the Court grants Ricoh's motion to compel arbitration and to stay the proceedings.

BACKGROUND

Ricoh is a corporation engaged in the business of selling and servicing document imaging and output equipment, including copiers, fax machines, printers and multi-functional devices, and related supplies and services such as software, paper and toner. On February 5, 2007, Delmore started working on a temporary basis for Lanier Worldwide, Inc., a subsidiary of Ricoh, as a Customer

1 Delivery Representative.

2 On February 12, 2007, Delmore and Lanier entered into a  
3 written confidentiality agreement. Delmore's supervisor, Paul  
4 Wilson, asked Delmore to come to his office to sign some paperwork.  
5 Delmore had previously signed some hiring paperwork, but Wilson  
6 told Delmore that he needed to sign one more form so that he could  
7 become a permanent, full-time employee. Delmore Dec. ¶ 6. Delmore  
8 signed the agreement in Wilson's office. Wilson told Delmore that  
9 the agreement was "just some bullshit paper that said that [he]  
10 couldn't tell other companies about our customers or our products."  
11 Delmore Dec. ¶ 7. The words "Confidentiality Agreement" are on the  
12 top of the first page in large, bold, capital letters. Delmore  
13 Dec., Ex. A at 1. Nobody aside from Delmore and Wilson was present  
14 during the signing of the agreement.

15 At Wilson's instruction, Delmore initialed next to paragraph  
16 eight and signed the last page of the agreement. Paragraph eight  
17 states:

18 If a legally cognizable dispute arises out of or relates to  
19 this Agreement or the breach, termination, or validity  
20 thereof, or the compensation, promotion, demotion, discipline,  
21 discharge or terms and conditions of employment of the  
22 Employee, and if said dispute cannot be settled through direct  
23 discussions, the parties voluntarily agree to resolve the  
24 dispute by binding arbitration before the American Arbitration  
25 Association ("AAA"), Center for Public Resources ("CPR"),  
26 Judicial Arbitration and Mediation Services ("JAMS") or  
27 Resolution Resources Corporation. The arbitration shall  
28 proceed in accordance with the Employment Dispute Resolution  
Rules of the AAA in effect on the date of the demand for  
arbitration, each side shall be allowed to take reasonable  
discovery, and judgment upon the award rendered by the  
arbitrator may be entered in any court having jurisdiction  
thereof, provided, however, that disputes involving the  
unauthorized use or disclosure of Trade Secrets or  
Confidential Information, may be settled by any court having  
jurisdiction thereof or decided by arbitration pursuant to  
this section. Disputes subject to binding arbitration  
pursuant to this section include all tort and contract claims

1 as well as claims brought under all applicable federal, state,  
2 or local statutes, laws, regulations, or ordinances, including  
3 but not limited to, Title VII of the Civil Rights Act of 1964,  
4 as amended; the Family and Medical Leave Act; the Americans  
5 with Disabilities Act; the Rehabilitation Act of 1973, as  
6 amended; the Fair Labor Standards Act of 1938, as amended; the  
7 Age Discrimination in Employment Act, as amended; the Equal  
8 Pay Act, the Civil Rights Act of 1866, as amended; the  
9 Employee Retirement Income Security Act of 1974; and state  
10 business and professions code claims. Disputes subject to  
11 binding arbitration pursuant to this section also include  
12 claims against the Company's parent and subsidiaries, and  
13 affiliated and successor companies, and claims against the  
14 Company that include claims against the Company's agents and  
15 employees, in their capacity as such and otherwise. The  
16 remedies available through arbitration shall include all  
17 remedies available if the dispute had been tried in court.  
18 Each party shall pay for his/her/its own fees and expenses of  
19 arbitration except that the cost of the arbitrator and any  
20 filing fee shall be paid by the Company. This arbitration  
21 provision shall not apply to any claim arising in a state that  
22 bars or prohibits the arbitration of such claims.

23 Delmore Dec., Ex. A ¶ 8. Paragraph eight was the only part of the  
24 five page agreement that Delmore was required to initial  
25 separately. Wilson also initialed it and signed at the end of the  
26 agreement. The entire process took about two minutes, after which  
27 Delmore returned to work.

28 On April 1, 2007, through a Certificate of Ownership and  
Merger dated March 19, 2007, Lanier merged with Ricoh Corporation.  
Nix Dec., Ex. A at 1. At that time, Lanier dissolved and ceased to  
exist as a separate entity. Ricoh Corporation assumed all of  
Lanier's assets, debts, rights, responsibilities, liabilities and  
obligations and Lanier employees became Ricoh Corporation  
employees. Nix Dec. ¶ 4. By the Certificate of Ownership and  
Merger, Ricoh Corporation also changed its name to Ricoh Americas  
Corporation. Nix Dec., Ex A at 2.

On April 20, 2009, Delmore filed a suit against Ricoh in  
Alameda County Superior Court for acts that occurred between

1 September, 2007 and June, 2008. Delmore specifically alleges that  
2 Ricoh (1) negligently hired and retained employees who  
3 discriminated against and harassed him; (2) discriminated against  
4 him in violation of the Fair Employment and Housing Act (FEHA),  
5 California Government Code Section 12940 et seq.; (3) retaliated  
6 against him in violation of FEHA; (4) discriminated against him in  
7 violation of public policy; (5) retaliated against him for  
8 complaints of discrimination in violation of public policy;  
9 (6) intentionally inflicted emotional distress upon him;  
10 (7) negligently inflicted emotional distress upon him;  
11 (8) negligently hired and retained employees who discriminated  
12 against and harassed him; and (9) negligently supervised and  
13 trained employees who discriminated against and harassed him.

14 On July 23, 2009, Ricoh removed the action to federal court  
15 pursuant to 28 U.S.C. § 1441(a) on grounds of diversity  
16 jurisdiction. Plaintiff does not dispute that removal was proper.

17 LEGAL STANDARD

18 Under the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq.,  
19 written agreements that require controversies between parties to be  
20 settled by arbitration are valid, irrevocable and enforceable. 9  
21 U.S.C. § 2. A party aggrieved by the refusal of another to  
22 arbitrate under a written arbitration agreement may petition the  
23 district court which would, save for the arbitration agreement,  
24 have jurisdiction over that action, for an order directing that  
25 arbitration proceed as provided for in the agreement. 9 U.S.C.  
26 § 4.

27 If the court is satisfied "that the making of the arbitration  
28 agreement or the failure to comply with the agreement is not in

1 issue, the court shall make an order directing the parties to  
2 proceed to arbitration in accordance with the terms of the  
3 agreement." Id. The FAA reflects a "liberal federal policy  
4 favoring arbitration agreements." Gilmer v. Interstate/Johnson  
5 Lane Corp., 500 U.S. 20, 25 (1991) (quoting Moses H. Cone Mem'l  
6 Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)). A district  
7 court must compel arbitration under the FAA if it determines that:  
8 1) there exists a valid agreement to arbitrate; and 2) the dispute  
9 falls within its terms. Stern v. Cingular Wireless Corp., 453 F.  
10 Supp. 2d 1138, 1143 (C.D. Cal. 2006) (citing Chiron Corp. v. Ortho  
11 Diagnostic Sys., 207 F.3d 1126, 1130 (9th Cir. 2000)).

#### 12 DISCUSSION

##### 13 I. Motion to Compel Arbitration

14 Delmore argues that the Court should not compel arbitration  
15 for three reasons. First, he argues that Ricoh is not party to the  
16 agreement and therefore has no right to enforce the arbitration  
17 clause. Second, Delmore argues that even if Ricoh is in privity  
18 with a party to the agreement, the agreement is unconscionable and  
19 should not be enforced. Finally, Delmore claims that his FEHA  
20 claims are not subject to arbitration because he did not make a  
21 "knowing waiver" of his right to a judicial forum for civil rights  
22 claims.

##### 23 A. Privity of Contract

24 As Delmore notes, the agreement is between Delmore and Lanier.  
25 Ricoh is not a signatory to the contract. Non-signatories of  
26 arbitration agreements may be bound by the agreement under ordinary  
27 contract and agency principles. Britton v. Co-op Banking Group, 4  
28 F.3d 742, 745 (9th Cir. 1993) (citing Letizia v. Prudential Bache

1 Sec., Inc., 802 F.2d 1185, 1187 (9th Cir. 1986)). Ricoh argues  
2 that, even though it was not a signatory to the contract, it can  
3 enforce the agreement because Lanier assigned the contract to Ricoh  
4 when the companies merged. To prove an effective assignment, the  
5 assignee must come forth with evidence that the assignor meant to  
6 assign rights and obligations under the contracts. Britton, 4 F.3d  
7 at 746.

8 In this case, Ricoh has evidence of an effective assignment in  
9 both the confidentiality agreement and the Certificate of Ownership  
10 and Merger. The agreement specifically states, "Disputes subject  
11 to binding arbitration pursuant to this section also include claims  
12 against the Company's parent and subsidiaries, and affiliated and  
13 successor companies . . . ." Delmore Dec., Ex. A ¶ 8. In  
14 addition, the agreement states, "Employee acknowledges and agrees  
15 that in the event of the sale of the Company, or any business of  
16 the Company, this Agreement shall be assignable to any successor  
17 company, without any further consideration therefor, at the sole  
18 discretion of the Company." Delmore Dec., Ex. A ¶ 11.

19 Under the Certificate of Ownership and Merger, Ricoh took  
20 possession of all the "estate, property, rights, privileges and  
21 franchises of Lanier." Nix. Dec., Ex. A at 1. Ricoh also assumed  
22 all of Lanier's assets, debts, rights, responsibilities,  
23 liabilities and obligations. (Nix Dec. ¶ 4). Lanier's contractual  
24 rights vested in Ricoh after the merger took place, and, therefore,  
25 Ricoh can enforce the agreement against Plaintiff.

26 B. Unconscionability

27 In determining whether an agreement to arbitrate is valid,  
28 federal courts must "apply ordinary state-law principles that

1 govern the formation of contracts." Circuit City Stores v. Adams,  
2 279 F.3d 889, 892 (9th Cir. 2002) (quoting First Options of  
3 Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)). "General  
4 contract defenses such as fraud, duress or unconscionability,  
5 grounded in state contract law, may operate to invalidate  
6 arbitration agreements." Id. (citing Doctor's Assocs., Inc. v.  
7 Casarotto, 517 U.S. 681, 687 (1996)); Ticknor v. Choice Hotels  
8 Int'l, Inc., 265 F.3d 931, 937 (9th Cir. 2001) (citing same). "If  
9 the court as a matter of law finds the contract or any clause of  
10 the contract to have been unconscionable at the time it was made  
11 the court may refuse to enforce the contract . . . ." Cal. Civ.  
12 Code § 1670.5(a).

13 Under California law, unconscionability has both a procedural  
14 and a substantive component. Armendariz v. Found. Health Psychcare  
15 Servs., 24 Cal. 4th 83, 114 (2000). Although both procedural and  
16 substantive unconscionability must be present before a court will  
17 refuse to enforce a contract, they need not be present to the same  
18 degree: "the more substantively oppressive the contract terms, the  
19 less evidence of procedural unconscionability is required to come  
20 to the conclusion that the term is unenforceable, and vice versa."  
21 Id.

22 1. Procedural Unconscionability

23 A contract or clause is procedurally unconscionable if it is a  
24 contract of adhesion. Circuit City, 279 F.3d at 893 ("The  
25 [arbitration agreement] is procedurally unconscionable because it  
26 is a contract of adhesion."); see also Flores v. Transamerica  
27 Homefirst, Inc., 93 Cal. App. 4th 846, 853 (2002) ("A finding of a  
28 contract of adhesion is essentially a finding of procedural

1 unconscionability."). A contract of adhesion is a "standardized  
2 contract, which, imposed and drafted by the party of superior  
3 bargaining strength, relegates to the subscribing party only the  
4 opportunity to adhere to the contract or reject it." Armendariz,  
5 24 Cal. 4th at 113 (quoting Neal v. State Farm Ins. Co., 188 Cal.  
6 App. 2d 690, 694 (1961)).

7 In Armendariz, the California Supreme Court found an  
8 arbitration contract to be procedurally unconscionable because  
9 it "was imposed on employees as a condition of employment and  
10 there was no opportunity to negotiate." 24 Cal. 4th at 114-15.  
11 The court explained that "the economic pressure exerted by  
12 employers on all but the most sought-after employees may be  
13 particularly acute, for the arbitration agreement stands between  
14 the employee and necessary employment, and few employees are in a  
15 position to refuse a job because of an arbitration requirement."  
16 Id.

17 Here, the agreement is a standard form contract required of  
18 all Ricoh employees. It was drafted by the party with superior  
19 bargaining strength, and was offered on a take-it-or-leave-it  
20 basis, with no opportunity for Delmore to negotiate its terms. It  
21 is therefore a contract of adhesion and is procedurally  
22 unconscionable.

23 Delmore argues that the arbitration clause is particularly  
24 procedurally unconscionable because it was hidden in a contract  
25 entitled, "Confidentiality Agreement," and the first three pages  
26 addressed only confidentiality issues. Procedural  
27 unconscionability may include an element of surprise. Am.  
28 Software, Inc. v. Ali, 46 Cal. App. 4th 1386, 1390 (1996).

1 "Surprise involves the extent to which the supposedly agreed-upon  
2 terms of the bargain are hidden in a prolix printed form drafted by  
3 the party seeking to enforce the disputed terms." Ellis v.  
4 McKinnon Broad. Co., 18 Cal. App. 4th 1796, 1803 (1993). However,  
5 Delmore's argument is undercut by the fact that he initialed the  
6 arbitration clause, and only the arbitration clause. The clause,  
7 therefore, was not "hidden" but required special attention.

## 8 2. Substantive Unconscionability

9 Under California law, a contract is enforceable, no matter how  
10 great the degree of procedural unconscionability, unless it is also  
11 substantively unconscionable. Armendariz, 24 Cal. 4th at 114.  
12 Substantive unconscionability focuses on the harshness and  
13 one-sided nature of the substantive terms of the contract. A & M  
14 Produce Co. v. FMC Corp., 135 Cal. App. 3d 473, 486-87 (1982). An  
15 adhesive agreement to arbitrate will satisfy this general standard  
16 for substantive unconscionability if the agreement lacks a "modicum  
17 of bilaterality." Armendariz, 24 Cal. 4th at 117. Whether an  
18 arbitration agreement is sufficiently bilateral is determined by an  
19 examination of the actual effects of the challenged provisions.  
20 Ellis, 18 Cal. App. 4th at 1803 ("Substantive unconscionability  
21 . . . refers to an overly harsh allocation of risks or costs which  
22 is not justified by the circumstances under which the contract was  
23 made.") (internal quotation marks omitted).

24 In addition, an employment agreement that requires the  
25 arbitration of unwaivable statutory claims is lawful only if it

26 (1) provides for neutral arbitrators, (2) provides for more  
27 than minimal discovery, (3) requires a written award,  
28 (4) provides for all of the types of relief that would  
otherwise be available in court, and (5) does not require  
employees to pay either unreasonable costs or any arbitrators'

1 fees or expenses as a condition of access to the arbitration  
2 forum.

3 Armendariz, 24 Cal. 4th at 102 (quoting Cole v. Breuns Intern. Sec.  
4 Serv., 105 F.3d 1465, 1482 (D.C. Cir. 1997)).

5 The agreement between Ricoh and Delmore fulfills these five  
6 basic requirements. The agreement explicitly fulfills the fourth  
7 and fifth requirements involving remedies and fees. The agreement  
8 states, "The remedies available through arbitration shall include  
9 all remedies available if the dispute had been tried in court."  
10 Delmore Dec., Ex. A ¶ 8. In terms of fees, the agreement requires  
11 the company to pay for the cost of the arbitrator and the filing  
12 fees, leaving the employee to pay only his own fees and expenses.  
13 Delmore Dec., Ex. A ¶ 8.

14 For the first, second, and third requirements of a neutral  
15 arbitrator, discovery and a written award respectively, the  
16 agreement states that the parties will follow the American  
17 Arbitration Association's Employment Dispute Resolution Rules (AAA  
18 Rules). Delmore Dec., Ex. A ¶ 8. The AAA Rules provide that a  
19 "neutral arbitrator" shall be appointed who is "experienced in the  
20 field of employment law" and who has "[n]o personal or financial  
21 interest in the results of the proceeding and . . . no relation to  
22 the underlying dispute or to the parties or their counsel that may  
23 create an appearance of bias." DeToy Dec., Ex. B at 9-10, AAA  
24 Employment Dispute Resolution Rule 12(b)(i-ii). For discovery, AAA  
25 Rule 9 gives the arbitrator authority to "order such discovery, by  
26 way of deposition, interrogatory, document production, or  
27 otherwise, as the arbitrator considers necessary to a full and fair  
28 exploration of the issues in dispute, consistent with the expedited

1 nature of arbitration." Id. at 9. Finally, AAA Rule 39(c)  
2 requires the arbitrator to issue a written award setting forth  
3 reasons for the award. Id. at 14.

4 Ricoh argues that an arbitration agreement passes muster  
5 under Armendariz if it meets these five minimum requirements.  
6 Ricoh mischaracterizes Armendariz. In that case, the California  
7 Supreme Court, after evaluating the minimum requirements applicable  
8 to mandatory employment arbitration agreements, went on to address  
9 other more general issues that also "fall under the rubric of  
10 unconscionability." Armendariz, 24 Cal. 4th at 113. Thus,  
11 although the agreement between Ricoh and Delmore satisfies these  
12 five requirements, the Court must determine whether there is any  
13 other way in which the agreement is substantively unconscionable.

14 Delmore contends that the arbitration clause is one-sided  
15 because it refers to disputes that are typically brought by  
16 employees against their employer, such as disputes arising out of  
17 "the compensation, promotion, demotion, discipline, discharge or  
18 terms and conditions of employment of the Employee." Delmore Dec.,  
19 Ex. A ¶ 8. While it may be true that employees are usually the  
20 plaintiffs in these disputes, this does not rise to the level of  
21 unconscionability described in Armendariz. Courts generally find  
22 unconscionability when the arbitration agreement forces employees  
23 to submit their claims to arbitration, while allowing the employer  
24 to retain his right to judicial forum. See Armendariz, 24 Cal. 4th  
25 at 117; Kinney v. United HealthCare Servs., 70 Cal. App. 4th 1322,  
26 1332 (1999). Here, the arbitration clause requires both Ricoh and  
27 Delmore to submit any employment-related claims to arbitration,  
28 including disputes regarding a breach of the Confidentiality

1 Agreement. Delmore Dec., Ex. A ¶ 8.

2 Delmore also argues that the agreement is substantively  
3 unconscionable because paragraph seven of the agreement is one-  
4 sided. Paragraph seven gives Ricoh the right to go to court to  
5 obtain an injunction against an employee who breaches  
6 confidentiality, and collect attorneys' fees in connection with the  
7 injunction, without giving the employee the same right. Delmore  
8 Dec., Ex. A ¶ 7. This discrepancy does not support a finding of  
9 substantive unconscionability because unconscionability turns not  
10 only on a "one-sided result but on an absence of justification for  
11 it." A & M Produce, 135 Cal. App. 3d at 487 (internal quotation  
12 marks omitted). Paragraph seven addresses specific remedies that  
13 Ricoh may pursue if an employee breaches confidentiality. Delmore  
14 Dec., Ex. A ¶¶ 3, 7. Ricoh is the only party that could complain  
15 of breach of confidentiality because it is the owner of the  
16 "Confidential Information" and "Trade Secrets" to which the  
17 agreement refers. Id. Thus, Ricoh is the only party that would  
18 need to obtain an injunction and, given that arbitrators do not  
19 have the power to grant injunctions, it would have to go to court  
20 to obtain one. Because there is a reasonable justification for the  
21 one-sided terms in paragraph seven, it does not render the  
22 agreement substantively unconscionable.

23 C. Knowing Waiver

24 Delmore argues that, because Ricoh never explicitly told him  
25 that he was agreeing to arbitrate his FEHA claims, he never made a  
26 knowing waiver of his right to a judicial forum for his FEHA  
27 claims, and therefore the arbitration agreement cannot be enforced.  
28 Delmore urges the Court to apply the Ninth Circuit's "knowing

1 waiver" standard to the arbitration agreement. Under the "knowing  
2 waiver" standard, "[a]ny bargain to waive the right to a judicial  
3 forum for civil rights claims . . . in exchange for employment or  
4 continued employment . . . must be explicitly presented to the  
5 employee and the employee must explicitly agree to waive the  
6 specific right in question." Nelson v. Cypress Baghdad Copper, 119  
7 F.3d 756, 762 (9th Cir. 1997).

8 However, as mentioned above, the FAA requires courts to look  
9 to relevant state law when deciding whether the parties agreed to  
10 arbitrate a particular matter. First Options of Chicago, Inc., 514  
11 U.S. at 944. California courts have refused to extend the "knowing  
12 waiver" standard beyond sex discrimination claims arising under  
13 Title VII. Cione v. Foresters Equity Servs., Inc., 58 Cal. App.  
14 4th 625, 645 (1997). Regarding arbitration agreements that apply  
15 to FEHA claims, California courts have rejected the "knowing  
16 waiver" standard as being "inconsistent with United States Supreme  
17 Court authority to the extent that it purports to create a federal  
18 contractual standard." Brookwood v. Bank of Am., 45 Cal. App. 4th  
19 1667, 1674-75 (1996).

20 Instead, California law requires courts to determine the  
21 existence of mutual assent to a contract based upon objective and  
22 outward manifestations of the parties. Stewart v. Precision  
23 Pipeline, 134 Cal. App. 4th 1565, 1587 (2005) (citing Beard v.  
24 Goodrich, 110 Cal. App. 4th 1031, 1040 (2003)). Delmore's  
25 signature on the confidentiality agreement and initial on the  
26 arbitration clause is objective evidence of his assent to its  
27 terms. Marin Storage & Trucking, Inc. v. Benco Contracting and  
28 Eng'g, Inc., 89 Cal. App. 4th 1042, 1049 (2001)("[O]rdinarily one

1 who signs an instrument which on its face is a contract is deemed  
2 to assent to all its terms." ). The unambiguous language of the  
3 agreement put Delmore on notice that, by initialing this paragraph  
4 and signing the agreement, he agreed to arbitrate any claims he had  
5 under Title VII or similar state civil rights statutes.

6 Even if the Court applied the "knowing waiver" standard in  
7 this case, Delmore would still be bound by the arbitration clause.  
8 The Ninth Circuit has held that a "knowing waiver does not occur  
9 where neither the arbitration clauses nor any other written  
10 employment agreement expressly puts the plaintiffs 'on notice that  
11 they were bound to arbitrate Title VII claims.'" Renteria v.  
12 Prudential Ins. Co. of Am., 113 F.3d 1104, 1108 (9th Cir. 1997)  
13 (quoting Prudential Ins. Co. of Am. v. Lai, 42 F.3d 1299, 1305 (9th  
14 Cir. 1994)). In Renteria and Lai the Ninth Circuit found that the  
15 plaintiffs did not making a "knowing waiver" of their statutory  
16 rights because the employment contracts that the plaintiffs signed  
17 did not "'describe the types of disputes that were to be subject to  
18 arbitration.'" Renteria, 113 F.3d at 1107 (quoting Lai, 42 F.3d at  
19 1305). The contract in dispute in Renteria only stated in general  
20 terms that employees would have to arbitrate disputes that arose  
21 between themselves and the company, customers, or anyone else in  
22 connection with the business. Renteria, 113 F.3d at 1105.  
23 Similarly, the contract in Nelson stated that employees had to  
24 arbitrate "any dispute arising out of or based on any state or  
25 federal statute or law" related to their employment. 119 F.3d at  
26 758. In contrast to these Ninth Circuit cases, the agreement  
27 between Delmore and Ricoh explicitly states that claims brought  
28 under all applicable federal and state laws, including Title VII

1 and similar civil rights laws, are subject to arbitration. Delmore  
2 Dec., Ex. A ¶ 8. Therefore, Delmore made a knowing waiver of his  
3 right to a judicial forum for his civil rights claims.

4 II. Motion to Stay the Proceedings

5 The FAA provides that:

6 If any suit or proceeding be brought in any of the courts  
7 of the United States upon any issue referable to  
8 arbitration under an agreement in writing for such  
9 arbitration, the court in which such suit is pending,  
10 upon being satisfied that the issue involved in such suit or  
11 proceeding is referable to arbitration under such an  
12 agreement, shall on application of one of the parties  
13 stay the trial of the action until such arbitration has  
14 been had in accordance with the terms of the  
15 agreement . . . .

16 9 U.S.C. § 3. The Court has determined that there is a valid  
17 arbitration agreement and that the dispute falls within its terms.  
18 Therefore, the Court must stay the proceedings.

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CONCLUSION

For the foregoing reasons, the Court GRANTS Ricoh's motion to compel arbitration. The case is stayed pending arbitration, which must be diligently pursued.<sup>1</sup> Nothing contained in this Order shall be considered a dismissal or disposition of this action, and, should further proceedings in this litigation become necessary or desirable, any party may move to restore the case to the Court's calendar.

IT IS SO ORDERED.

Dated: 10/20/09



\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

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<sup>1</sup> There appears to be no further reason at this time to maintain the file as an open one for statistical purposes, and the Clerk is instructed to submit a JS-6 Form to the Administrative Office.