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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 **JEUL SLADE,**
9 Plaintiff,
10 v.
11 **EMPIRE TODAY, et al.,**
12 Defendants.

Case No. 20-cv-9301-YGR

**ORDER DENYING MOTION TO COMPEL
ARBITRATION WITHOUT PREJUDICE;
SETTING COMPLIANCE DEADLINE**

Dkt. No. 10

13 Defendant Empire Today, LLC filed its motion to compel plaintiff to arbitrate claims and
14 to dismiss action with prejudice on January 12, 2021. (Dkt. No. 10.) That motion came on
15 regularly for hearing by videoconference on February 16, 2021.

16 Having carefully considered the briefing, evidence,¹ and arguments of the parties, and for
17 the reasons set forth on the record, the motion to compel arbitration is **DENIED WITHOUT**
18 **PREJUDICE**. Under the applicable summary judgment-like standard, there is a material dispute of
19 fact as to formation of the agreement to arbitrate on the current record. *Three Valleys Municipal*
20 *Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 136, 1141 (9th Cir. 1991); *Ackerberg v. Citicorp USA,*
21 *Inc.*, 898 F. Supp. 2d 1172, 1175 (N.D. Cal. 2012). While the arguments raised by plaintiff
22 regarding unconscionability and exemption from the FAA fail to persuade on the record before the
23 Court, this decision does not reach those arguments due to defendant's failure to establish the
24 existence of an agreement to arbitrate.

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27 ¹ The Court notes that plaintiff filed a separate set of objections to defendant's evidence,
28 in violation of Civil Local Rule 7-3(a) ("Any evidentiary and procedural objections to the motion
must be contained within the brief or memorandum.") The Court has not considered this
additional document. However, the essence of those objections was raised in the course of the
parties' briefing and arguments and sufficiently addressed by the evidence submitted on reply.

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The parties are granted leave to take **limited** discovery on the issue of contract formation only.

Bearing in mind that the existence of disputed material facts will preclude a decision under the motion to compel standard, no later than **May 28, 2021**, either: (1) defendant shall file a renewed motion to compel arbitration; or (2) the parties shall file a joint statement regarding how they wish to proceed. *See* 9 U.S.C. § 4 (the court is to proceed summarily to a trial of the dispute as to formation of the agreement). The Court **SETS** a compliance deadline of **June 4, 2021**, regarding the above filing.

This terminates Docket No. 10.

IT IS SO ORDERED.

Dated: February 17, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE