UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

HOAI DANG, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Case No. 14-CV-00530-LHK

ORDER GRANTING MOTION TO COMPEL ARBITRATION, AND DENYING AS MOOT MOTION TO DISMISS AND MOTION TO TRANSFER VENUE

Plaintiff Hoai Dang ("Plaintiff"), on behalf of himself and all others similarly situated, brings a putative class action lawsuit against defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively, "Samsung" or "Defendants"). Before the Court are Defendants' motion to compel arbitration pursuant to the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 4, see ECF No. 49 ("Mot."); Defendants' motion to dismiss, see ECF No. 51; and Plaintiff's motion to transfer venue, see ECF No. 53.

Having considered the submission of the parties, the relevant law, and the record in this case, the Court hereby GRANTS Defendants' motion to compel arbitration. Accordingly, the

Court DENIES as moot Defendants' motion to dismiss and Plaintiff's motion to transfer venue. The case management conference set for August 19, 2015, at 2:00 p.m. is hereby VACATED.

I. BACKGROUND

A. Factual Background

Plaintiff's individual and putative class claims arise out of the Apple v. Samsung litigation.[1] According to Plaintiff, Samsung has been found to have "repeatedly infringed the patents of its chief competitor, Apple." ECF No. 44, Amended Complaint ("AC") ¶ 22. As a result, Plaintiff alleges, many Samsung devices, including Plaintiff's Samsung Galaxy SIII (the "Galaxy SIII") smartphone, "are worth significantly less than the prices the consumers paid, resulting in injury and damages to the consumers." Id. ¶¶ 7, 32. For example, Plaintiff alleges that "the re-sale value for the Samsung Products has dropped dramatically due to the fact that the Products infringe patents." Id. ¶ 33. Had Plaintiff known the Galaxy SIII "he purchased infringed on the patents held by Defendants' competitor, Apple," Plaintiff says "he would not have purchased the Product." Id. ¶ 8.

As relevant here, Plaintiff purchased his Galaxy SIII in May 2012 from a Best Buy store located at 181 Curtner Avenue in San Jose, California. AC ¶ 7. Plaintiff paid approximately $199, plus taxes and fees. Id.

Along with his Galaxy SIII, Plaintiff received a booklet entitled in bold font "**Important Information for the Samsung SPH-L710**."[2] ECF No. 67-1, Declaration of George V. Granade ("Granade Decl.") ¶ 5; ECF No. 67-2 (the "Information Booklet"). The Information Booklet is included in the packaging that accompanies every Galaxy SIII sold in the United States. ECF No. 50, Declaration of Paul DeCarlo ("DeCarlo Decl.") ¶ 4. Plaintiff's smartphone was no exception.

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[1] Specifically, Plaintiff references Apple Inc. v. Samsung Electronics Co., Ltd. et al., No. 11-CV-01846-LHK (N.D. Cal.) ("Apple I"), and Apple Inc. v. Samsung Electronics Co., Ltd. et al., No. 12-CV-00630-LHK (N.D. Cal.) ("Apple II").

[2] According to Samsung, "SPH-L710" is the designation for the Galaxy SIII packaged for Sprint, see ECF No. 70 ("Reply") at 2 n.1, which is Plaintiff's wireless provider, see ECF No. 67 ("Opp.") at 2 n.1.

See Opp. at 2 (referring to "the Information Booklet that was packaged with Mr. Dang's phone"). The front of the box containing Plaintiff's Galaxy SIII informs consumers that it contains a smartphone, various accessories, and an "Important Information Booklet." ECF No. 67-3 (the "SIII Box") at 2. The back of the box further directs consumers to a "warranty disclaimer" in the "Important Information Booklet." Id. at 3.

On the first page of the sixty-three-page Information Booklet, consumers are directed by a table of contents to the "Manufacturer's Warranty," also known as the "STANDARD LIMITED WARRANTY," which begins on page fifteen. Information Booklet at 1, 15. The Standard Limited Warranty for the Galaxy SIII is also available on Samsung's website, http://www.samsung.com/us/support/downloads, for consumers to view. DeCarlo Decl. ¶ 9. On page nineteen of the Information Booklet (also the fifth page of the Standard Limited Warranty), the following heading appears in bold, underlined font: "**What is the procedure for resolving disputes?**" Information Booklet at 19. What follows this heading is what the Court will refer to as the "Arbitration Provision."

> The Arbitration Provision begins with the following statement, in all capital letters:
>
> ALL DISPUTES WITH SAMSUNG ARISING IN ANY WAY FROM THIS LIMITED WARRANTY OR THE SALE, CONDITION OR PERFORMANCE OF THE PRODUCTS SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY.

Information Booklet at 19. The Arbitration Provision provides further that any such dispute "shall not be combined or consolidated with a dispute involving any other person's or entity's Product or claim, and specifically, without limitation of the foregoing, shall not under any circumstances proceed as part of a class action." Id. The Arbitration Provision, which extends to "claims against SAMSUNG's employees, representatives and affiliates if any such claim arises from the Product's sale, condition or performance," is "entered pursuant to the Federal Arbitration Act." Id. at 19-20. "The laws of the State of Texas," the provision continues, "shall govern the interpretation of the Limited Warranty and all disputes that are subject to this arbitration provision." Id. at 20.

The Arbitration Provision also contains an express procedure by which consumers can opt

out (the "Opt-Out Procedure"). Specifically, the Opt-Out Procedure provides, in bold font:

> **You may opt out of this dispute resolution procedure by providing notice to SAMSUNG no later than 30 calendar days from the date of the first consumer purchaser's purchase of the Product.**

Information Booklet at 20. There are two ways for consumers to opt out of the Arbitration Provision: (1) sending an e-mail; or (2) calling a toll-free telephone number. Id. at 20-21. Either way, consumers wishing to opt out must provide their name and address, the date the Galaxy SIII was purchased, and the smartphone's model number and serial number. Id. at 21. Importantly, opting out of the Arbitration Provision is without penalty, as the Opt-Out Procedure explains in bold font: "**Opting out of this dispute resolution procedure will not affect the coverage of the Limited Warranty in any way, and you will continue to enjoy the benefits of the Limited Warranty.**" Id. Plaintiff does not allege that he opted out of the Arbitration Provision.

Plaintiff does allege that the Best Buy salesperson "did not mention, draw attention to, or make Plaintiff aware of the purported arbitration provision in the warranty booklet." AC ¶ 7. According to Plaintiff, he "was completely unaware of the purported arbitration provision in the warranty booklet." Id.

B. Procedural History

On February 4, 2014, Plaintiff filed this action in federal court. ECF No. 1 ("Compl."). Plaintiff brought breach of warranty claims under the laws of all fifty states, as well as claims under various state consumer protection statutes. Id. ¶¶ 45-88. In support of his warranty claims, Plaintiff alleged that he "and the Nationwide Class members each formed a contract with Defendants at the time they purchased the Products." Id. ¶ 46. "As part of each contract," Plaintiff continued, "Defendants warranted that the Products were delivered free of the rightful claims of any third person of patent infringement." Id. ¶ 47.

On April 30, 2014, this action was related to Apple I. ECF No. 24. This action was reassigned to the undersigned judge the following day.

On May 12, 2014, the Court granted the parties' stipulation to stay this action pending

service in Korea on defendant Samsung Electronics Co., Ltd. ECF No. 29. The case was administratively closed as a result. Id. Pursuant to a subsequent stipulation approved by the Court on November 24, 2014, this action was to be "stayed until 30 days after Plaintiff files a Proof of Service showing service in Korea." ECF No. 34. On January 8, 2015, Plaintiff filed that proof of service. ECF No. 36.

On February 9, 2015, Defendants filed a motion to dismiss and a motion to compel arbitration. ECF Nos. 37, 39. In response, Plaintiff indicated on February 23, 2015, that he would be filing an amended complaint ("AC") on or before March 2, 2015, that "will moot Defendants' Motions." ECF No. 41 at 2.

On March 2, 2015, Plaintiff filed the AC, which alleges five causes of action: (1) breach of statutory warranty against infringement under the laws of all fifty states, AC ¶¶ 45-52; (2) violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq., id. ¶¶ 53-57; (3) violation of California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq., id. ¶¶ 58-65; (4) restitution and unjust enrichment under the laws of California, New Jersey, and New York, id. ¶¶ 66-69; and (5) declaratory and injunctive relief, id. ¶¶ 70-78. In the AC, Plaintiff has deleted all references to a "contract" from the section describing his breach of warranty claims. See id. ¶¶ 46-47. "Through the sale of the Products," Plaintiff now asserts, "Defendants warranted that the Products were delivered free of the rightful claims of patent infringement by any third person." Id. ¶ 47. According to Plaintiff, "These warranties were automatically attached upon the sale of the Products," and they "arise out of state statutes and not from any written agreement and/or written promise between the parties." Id. In the section describing his claims for declaratory and injunctive relief, Plaintiff now refers to the Standard Limited Warranty as the "purported 'agreement.'" Id. ¶¶ 71-72.

Due to Plaintiff's filing of the AC, the Court denied as moot Defendants' then-pending motion to dismiss and motion to compel arbitration on March 16, 2015, and March 18, 2015, respectively. ECF Nos. 46, 48. The Court also lifted the stay that had been in effect since May

12, 2014. ECF No. 46.

On March 19, 2015, Defendants filed the instant motion to compel arbitration. See Mot. at 25. That same day, Defendants filed a renewed motion to dismiss. ECF No. 51. On March 20, 2015, Plaintiff filed his motion to transfer venue. ECF No. 53. All three motions were set for hearing on August 6, 2015.

On April 3, 2015, Plaintiff moved to stay consideration of Defendants' motion to compel arbitration and motion to dismiss pending the Court's decision on Plaintiff's motion to transfer venue. ECF No. 59. The Court denied Plaintiff's stay request on April 7, 2015. ECF No. 61.

Pursuant to the parties' stipulation, ECF No. 62, which the Court approved on April 15, 2015, ECF No. 63, Plaintiff filed his opposition to Defendants' motion to compel arbitration on May 18, 2015, see Opp. at 22. Pursuant to that same stipulation, Defendants filed a reply in support of their motion to compel arbitration on June 15, 2015. See Reply at 15.[3]

On August 4, 2015, and pursuant to Civil Local Rule 7-1(b), the Court vacated the motion hearings set for August 6, 2015. ECF No. 76.

II. LEGAL STANDARD

The FAA applies to arbitration agreements in any contract affecting interstate commerce. See Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 111-12 (2001) (quoting 9 U.S.C. § 2). Under the FAA, "a party may apply to a federal court for a stay of the trial of an action 'upon any issue referable to arbitration under an agreement in writing for such arbitration.'" Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 68 (2010) (quoting 9 U.S.C. § 3). If all claims in litigation are subject to a valid arbitration agreement, a federal court has discretion to dismiss or stay the case. Nitsch v. DreamWorks Animation SKG Inc., No. 14-CV-04062-LHK, 2015 WL 1886882, at *8 (N.D. Cal. Apr. 24, 2015).

In deciding whether a dispute is arbitrable, a federal court must answer two questions: (1)

[3] The oppositions to and replies in support of the other two pending motions—Defendants' motion to dismiss and Plaintiff's motion to transfer venue—were likewise filed on May 18, 2015, and June 15, 2015, respectively. See ECF Nos. 65, 66, 68, 69.

whether the parties agreed to arbitrate; and, if so, (2) whether the scope of that agreement to arbitrate encompasses the claims at issue. See Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000). If the party seeking to compel arbitration establishes both factors, the court must compel arbitration. Id. "The standard for demonstrating arbitrability is not a high one; in fact, a district court has little discretion to deny an arbitration motion, since the [FAA] is phrased in mandatory terms." Republic of Nicar. v. Std. Fruit Co., 937 F.2d 469, 475 (9th Cir. 1991).

The party seeking to compel arbitration bears "the burden of proving the existence of an agreement to arbitrate by a preponderance of the evidence." Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014). In deciding whether the parties agreed to arbitrate a certain matter, "federal courts 'apply ordinary state-law principles that govern the formation of contracts.'" Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1175 (9th Cir. 2014) (quoting First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)). At the same time, a federal court must "giv[e] due regard to the federal policy in favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of arbitration." Mundi v. Union Sec. Life Ins. Co., 555 F.3d 1042, 1044 (9th Cir. 2009) (quoting Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1049 (9th Cir. 1996)). If a contract contains an arbitration clause, "there is a presumption of arbitrability." *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986).

III. DISCUSSION

Defendants argue that, through the Arbitration Provision contained in the Information Booklet Plaintiff received with his Galaxy SIII, Plaintiff agreed (1) to arbitrate his individual claims against Defendants; and (2) not to bring such claims as a class action. Mot. at 9-21, 25. Defendants argue further that Plaintiff's claims fall within the scope of the Arbitration Provision and that the provision is neither procedurally nor substantively unconscionable. Id. at 21-25.

As Plaintiff does not dispute that his claims fall within the scope of the Arbitration Provision or that the provision is not unconscionable, see Reply at 1, the only issue to decide is

whether the Arbitration Provision constitutes a valid agreement between the parties to arbitrate Plaintiff's individual claims, see Chiron, 207 F.3d at 1130. For the reasons stated below, the Court finds that it is.

A. Agreement to Arbitrate Individual Claims

The parties agree that although the laws of Texas govern the Standard Limited Warranty, see Information Booklet at 20, it is California law that governs the question of whether a valid agreement to arbitrate was formed, see Mot. at 10; Opp. at 5; see also Nguyen, 763 F.3d at 1175 ("Federal courts sitting in diversity look to the law of the forum state—here, California—when making choice of law determinations. Under California law, the parties' choice of law will [ordinarily] govern . . . .").

Under California law, "mutual assent is a required element of contract formation." Knutson, 771 F.3d at 565. "Mutual assent," the Ninth Circuit has explained, "may be manifested by written or spoken words, or by conduct." Id. (quoting Binder v. Aetna Life Ins. Co., 75 Cal. App. 4th 832, 850 (1999)). In addition, "acceptance of contract terms may be implied through action or inaction." Id. Accordingly, "an offeree, knowing that an offer has been made to him but not knowing all of its terms, may be held to have accepted, by his conduct, whatever terms the offer contains." Id. (quoting Windsor Mills, Inc. v. Collins & Aikman Corp., 25 Cal. App. 3d 987, 991 (1972)). In the end, a court "must determine whether the outward manifestations of consent would lead a reasonable person to believe the offeree has assented to the agreement." Id. (citing Meyer v. Benko, 55 Cal. App. 3d 937, 942-43 (1976)).

1. A Valid Agreement

Defendants argue that when Plaintiff purchased his Galaxy SIII and received the Standard Limited Warranty packaged with it, the terms of the warranty immediately commenced and Plaintiff therefore agreed to the Arbitration Provision contained therein. Mot. at 9. This kind of "shrinkwrap agreement," according to Defendants, "is commonplace in modern consumer transactions" and "regularly enforce[d]" by courts. Id. Defendants argue further that by choosing

not to avail himself of the Opt-Out Procedure, Plaintiff assented to the Arbitration Provision. Id. at 12.

The Court agrees. Plaintiff admits that he received the Information Booklet containing the Standard Limited Warranty and Arbitration Provision in the packaging with his Galaxy SIII. See Granade Decl. ¶ 5; Opp. at 2. Plaintiff admits further that the Standard Limited Warranty amounts to a shrinkwrap agreement, see Opp. at 5 (referencing "'shrinkwrap' agreements like this one where terms and conditions are included inside product packaging" (emphasis added)), and that "courts in this district enforce shrinkwrap agreements," id. at 6. Indeed, there is no dispute that such agreements are "clearly enforceable in California." Wall Data Inc. v. *L.A. Cnty. Sheriff's Dep't*, 447 F.3d 769, 782 (9th Cir. 2006); see also Datel Holdings Ltd. v. Microsoft Corp., 712 F. Supp. 2d 974, 989 (N.D. Cal. 2010) ("The weight of authority, . . . including in this district, is that shrinkwrap licenses are enforceable."). Nor is there dispute that shrinkwrap agreements may extend to arbitration provisions contained therein. See, e.g., Hill v. Gateway 2000, Inc., 105 F.3d 1147, 1148-49 (7th Cir. 1997) (enforcing arbitration clause found in product packaging and subject to a thirty-day accept-or-return policy); Arellano v. T-Mobile USA, Inc., No. C 10-05663 WHA, 2011 WL 1362165, at *3 (N.D. Cal. Apr. 11, 2011) (finding valid an arbitration agreement contained in terms and conditions included in the smartphone's box and available online); Bischoff v. DirecTV, Inc., 180 F. Supp. 2d 1097, 1103-05 (C.D. Cal. 2002) (finding valid an arbitration clause included in an agreement mailed with each customer's first billing statement).

Rather, what Plaintiff disputes is whether the Arbitration Provision was sufficiently conspicuous to put Plaintiff on inquiry notice that he would be bound by its terms. See Opp. at 6-14. It is true, as Plaintiff emphasizes, that "an offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he was unaware, contained in a document whose contractual nature is not obvious." Windsor Mills, 25 Cal. App. 3d at 993; accord Knutson, 771 F.3d at 566.

That is not the case here, however. While Plaintiff may have been "completely unaware"

of the Arbitration Provision, AC ¶ 7, this fact is of little help to him. It is well established under California law that "a party cannot avoid the terms of a contract by failing to read them." Knutson, 771 F.3d at 567; see also Specht v. Netscape *Commc'*ns Corp., 306 F.3d 17, 31 (2d Cir. 2002) (explaining that under California law "receipt of a physical document containing contract terms or notice thereof is frequently deemed, in the world of paper transactions, a sufficient circumstance to place the offeree on inquiry notice of those terms"); Murphy v. DIRECTV, Inc., No. 2:07-CV-06465-JHN, 2011 WL 3319574, at *2 (C.D. Cal. Aug. 2, 2011) (agreeing that "competent adults are bound by [customer agreements], read or unread" (internal quotation marks omitted)), *aff'd*, 724 F.3d 1218, 1225 n.4 (9th Cir. 2013). In fact, the California Supreme Court recently held an arbitration clause enforceable where the plaintiff had alleged he "was not given an opportunity to read" the vehicle sales contract containing the clause and "had no reason to suspect that hidden on the back of the contract[] was a section that prohibited [him] from being able to sue the Dealership in court if [he] had a problem." Sanchez v. Valencia Holding Co., LLC, — Cal. 4th —, 2015 WL 4605381, at *3 (Aug. 3, 2015).

Furthermore, Defendants have adequately shown that the Arbitration Provision was not "inconspicuous." Windsor Mills, 25 Cal. App. 3d at 993. The California Supreme Court explained recently that a defendant is "under no obligation to highlight the arbitration clause of its contract, nor [is] it required to specifically call that clause to [the plaintiff's] attention." Sanchez, 2015 WL 4605381, at *7. Nonetheless, Defendants have done so here. As detailed above, the front of Plaintiff's SIII Box informs consumers that an "Important Information Booklet" could be found therein. The back of the box, moreover, directs consumers to a "warranty disclaimer" in the "Important Information Booklet." That sixty-three-page booklet, titled in bold font "**Important Information for the Samsung SPH-L710**," directs consumers to the "Manufacturer's Warranty," labeled in all capital letters on page fifteen as the "STANDARD LIMITED WARRANTY." Information Booklet at 1, 15. On page nineteen of the Information Booklet—only the fifth page of the Standard Limited Warranty—begins the Arbitration Provision beneath the following

heading in bold, underlined font: "**What is the procedure for resolving disputes?**" Id. at 19. The Arbitration Provision's key language then appears in all capital letters:

> ALL DISPUTES WITH SAMSUNG ARISING IN ANY WAY FROM THIS LIMITED WARRANTY OR THE SALE, CONDITION OR PERFORMANCE OF THE PRODUCTS SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY.

Id. The Opt-Out Procedure, which gives consumers thirty days to opt out of the Arbitration Provision via email or toll-free telephone call, starts on the very next page and is printed in bold font. Id. at 20-21. Had Plaintiff availed himself of the Opt-Out Procedure, there would have been no penalty: "**Opting out of this dispute resolution procedure will not affect the coverage of the Limited Warranty in any way, and you will continue to enjoy the benefits of the Limited Warranty.**" Id. (bold in original).

Defendants have also shown that the Arbitration Provision was not "contained in a document whose contractual nature is not obvious." Windsor Mills, 25 Cal. App. 3d at 993. To the contrary, the Arbitration Provision could be found on the fifth page of the Galaxy SIII's Standard Limited Warranty. Information Booklet at 19-21. Such express warranties are plainly "contractual" in nature. See, e.g., Hauter v. Zogarts, 14 Cal. 3d 104, 117 (1975) (explaining that "express warranties . . . are basically contractual in nature"); Daugherty v. Am. Honda Motor Co., 144 Cal. App. 4th 824, 830 (2006) ("A warranty is a contractual promise from the seller that the goods conform to the promise."); see also Oblix, Inc. v. Winiecki, 374 F.3d 488, 491 (7th Cir. 2004) ("California routinely enforces limited warranties and other terms found in form contracts.").[4]

[4] To the extent Plaintiff asserts post-hoc that the Information Booklet's inclusion of terms and conditions pertaining to Sprint created "confusion" sufficient to render the Arbitration Provision unenforceable, see Opp. at 12-14, the Court disagrees. The Arbitration Provision contains no references to Sprint. To the contrary, the provision states at the beginning and in all capital letters that it covers "ALL DISPUTES WITH SAMSUNG." Information Booklet at 19 (emphasis added). Moreover, consumers wishing to take advantage of the Opt-Out Procedure are told they may do so by "**providing notice to SAMSUNG**." Id. at 20 (bold in original). One way of opting out, consumers are told further, is to email Samsung at the following address: "**optout@sta.samsung.com**." Id. (bold in original).

Lastly, Plaintiff's failure to avail himself of the Opt-Out Procedure adequately establishes his assent to the Arbitration Provision. As stated earlier, California law recognizes that "acceptance of contract terms may be implied through action or inaction." Knutson, 771 F.3d at 565 (citing Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 593-95 (1991)); accord Silicon Valley Self Direct, LLC v. Paychex, Inc., No. 5:15-CV-01055-EJD, 2015 WL 4452373, at *3 (N.D. Cal. July 20, 2015). "Acceptance of an offer," moreover, "may be inferred from inaction in the face of a duty to act . . . and from retention of the benefit offered." Golden Eagle Ins. Co. v. Foremost Ins. Co., 20 Cal. App. 4th 1372, 1386 (1993) (citations omitted). In this vein, courts routinely find that a consumer has accepted the terms of an arbitration agreement by failing to take advantage of a mechanism for opting out. See, e.g., Arellano, 2011 WL 1362165, at *4 (compelling arbitration where smartphone purchaser "was given 30 days to opt out of the arbitration agreement"); Bischoff, 180 F. Supp. 2d at 1101, 1103-05 (enforcing arbitration clause contained in an agreement mailed to satellite television subscribers that contained an opt-out provision). This is especially true where, as here, the choice to opt out is without penalty to the consumer. See, e.g., Arellano, 2011 WL 1362165, at *4 (enforcing arbitration agreement where smartphone purchaser, "if she had chosen to opt out, . . . would not have suffered any adverse consequences").[5]

For these reasons, the Court finds that Plaintiff entered into a valid agreement with

[5] Plaintiff's reliance on Knutson v. Sirius XM Radio Inc., which he claims "is particularly instructive in this regard," is unavailing. Opp. at 10. In Knutson, the plaintiff purchased a Toyota pickup truck that included a ninety-day trial subscription to Sirius XM ("Sirius") satellite radio. 771 F.3d at 561-62. Weeks later, Sirius mailed the plaintiff a "Welcome Kit" that included a customer agreement containing an arbitration provision with an opt-out window of just three days. Id. at 562. The Ninth Circuit held the arbitration provision unenforceable because there was no indication that the plaintiff had "entered into an agreement for service with Sirius XM when he purchased the vehicle." Id. at 566. As far as the plaintiff was concerned, he was "only in a contractual relationship with Toyota." Id. The Ninth Circuit distinguished Knutson from other shrinkwrap agreement cases, such as this one, where "the customer specifically elected to receive the service directly from the service provider." Id. at 567. Here, unlike in Knutson, the arbitration provision applies to disputes with the manufacturer of the product purchased (i.e., Samsung), not to disputes with a third party.

Defendants to arbitrate his individual claims arising out of the sale of his Galaxy SIII.

2. Most Other Courts Agree

The weight of authority supports the Court's conclusion. In four other cases, three district judges in two different judicial districts enforced arbitration provisions nearly identical to the one at issue here against purchasers of Samsung Galaxy smartphones. See McNamara v. Samsung Telecomms. Am., LLC, No. 14 C 1676, 2014 WL 5543955 (N.D. Ill. Nov. 3, 2014) (Leinenweber, J.); Sheffer v. Samsung Telecomms. Am., LLC, No. CV 13-3466-GW AJWX, 2014 WL 506556 (C.D. Cal. Jan. 30, 2014) (Wu, J.), appeal dismissed (Dec. 23, 2014); Han v. Samsung Telecomms. Am., LLC, No. CV 13-3823-GW AJWX, 2014 WL 505999 (C.D. Cal. Jan. 30, 2014) (Wu, J.); Carwile v. Samsung Telecomms. Am., LLC, 2013 U.S. Dist. LEXIS 185089 (C.D. Cal. July 9, 2013) (Carney, J.).

In Sheffer, for example, purchasers of the Samsung Galaxy S4 (the "Galaxy S4") smartphone (the Galaxy SIII's successor) brought a putative class action alleging that Samsung had falsely advertised the smartphone's storage capacity. 2014 WL 506556, at *1. Like Plaintiff's Galaxy SIII, the Galaxy S4s in Sheffer were packaged with warranty booklets containing a standard limited warranty, which, in turn, contained an arbitration clause substantially identical to the Arbitration Provision here. Compare id. at *2 (quoting and explaining relevant portions of the Galaxy S4 arbitration provision), with Information Booklet at 19-21 (Arbitration Provision). Samsung moved to compel arbitration based upon the Galaxy S4's arbitration provision, but the plaintiffs in Sheffer objected on grounds similar to those relied on by Plaintiff here. To wit, the Sheffer plaintiffs argued that the provision was not binding "because it was not identified in the Booklets' table of contents; because it was located in an 'innocuously titled' section about warranties in the middle of lengthy documents; and because the clause was buried inside documents whose contractual nature was not obvious to the purchaser—especially given that the covers of the Booklets do not explicitly reference 'agreements' or contractual 'terms.'" 2014 WL 506556, at *2.

The district court in Sheffer rejected these arguments for reasons similar to those advanced by the Court here. First, the Sheffer court disagreed that the arbitration provision was inconspicuously "buried" in the warranty booklets because (1) the booklets "disclose[d] the location of the Standard Limited Warranty in the table of contents"; (2) the "arbitration clauses appear underneath a bold heading entitled, '**What is the procedure for resolving disputes?**'"; (3) the plaintiffs "were given a full month to opt out of the terms at issue"; and (4) "[t]he opt-out provision itself is also presented in all bold text." Sheffer, 2014 WL 506556, at *3.

Second, the Sheffer court rejected the argument that "no agreement was formed merely because the document containing an arbitration provision was too long." 2014 WL 506556, at *2. The mere "fact that the warranty's arbitration clause is contained in a larger document or collection of documents provided with a consumer good does not," the Sheffer court concluded, "invariably render that provision unenforceable." Id.; see also Uptown Drug Co., Inc. v. CVS Caremark Corp., 962 F. Supp. 2d 1172, 1182 (N.D. Cal. 2013) (upholding arbitration provision "located on pages 49 and 50" of a 217-page "Provider Manual" even though the provision did "not contain an express 'opt-out' clause"). In Sheffer, the arbitration clauses were "located on pages 35 to 37 of the 50-page AT&T Booklet and pages 76 to 80 of the 101-page Verizon Booklet." 2014 WL 506556, at *2. Here, by contrast, the Arbitration Provision is located on pages nineteen to twenty-one of Sprint's sixty-three-page Information Booklet.

Third, the Sheffer court rejected the named plaintiff's argument that "he did not actually see and was not aware of the terms at issue" because "competent adults may be 'bound by such documents, read or unread.'" Sheffer v. Samsung Telecomms. Am., LLC, No. CV 13-3466-GW AJWX, 2013 WL 7158343, at *4 (C.D. Cal. Dec. 16, 2013) (quoting Bischoff, 180 F. Supp. 2d at 1105).[6]

[6] In its order dated January 30, 2014, the district court in Sheffer "incorporated by reference" its tentative ruling dated December 16, 2013, which "extensively addressed Plaintiffs' contentions that mutual assent did not exist because of the placement of the arbitration clause and the inconspicuous, supposedly non-contractual nature of the Booklets." Sheffer, 2014 WL

Finally, the Sheffer court found that the plaintiffs could "not credibly dispute that the Standard Limited Warranty is 'contractual' in nature." 2013 WL 7158343, at *4. The import of this finding is twofold. First, it distinguished the case from Windsor Mills, which applies only where, unlike here, the arbitration clause is found "in a document whose contractual nature is not obvious." 25 Cal. App. 3d at 993. Second, the Sheffer court noted that the plaintiff smartphone purchasers in the related "Han case actually seek to enforce the Standard Limited Warranty" against Samsung. 2014 WL 506556, at *3. The irony was not lost on the Sheffer court that the Han plaintiffs sought to enforce warranty claims against Samsung while insisting simultaneously that the arbitration provisions in those warranties were unenforceable. Nor is that irony lost here. Although the AC now emphasizes that Plaintiff's warranty claims "arise out of state statutes and not from any written agreement and/or written promise between the parties," AC ¶ 47, the Court is not blind to the fact that Plaintiff's original complaint expressly alleged that he had "formed a contract with Defendants" at the time of purchase, Compl. ¶ 46; see also id. ¶ 47 ("As part of each contract, Defendants warranted that the Products were delivered free of the rightful claims of any third person of patent infringement." (emphasis added)).

Arbitration was also compelled in three other similar cases against Samsung. The same district court judge in Sheffer also granted Samsung's motion to compel arbitration in the related Han case.[7] See Han, 2014 WL 505999, at *3-4 (granting motion to compel arbitration where plaintiffs "received the Booklets at the time of purchase," "those Booklets unmistakably contain 'warranty' information," and plaintiffs "were given a full month to opt out of the terms at issue"). In another case arising out of the Central District of California, a different judge enforced an arbitration term virtually identical to the Arbitration Provision against a putative class of consumers alleging a defect in their Samsung Galaxy SII smartphones. See Carwile, 2013 U.S.

506556, at *2.

[7] A chief difference between Han and Sheffer was that the plaintiffs in Han asserted warranty claims against Samsung while the Sheffer plaintiffs did not. See Han, 2014 WL 505999, at *3.

Dist. LEXIS 185089, at *8-13 (holding that plaintiff "remains bound by the terms of the arbitration provision" that "was contained in the Warranty, which was included in the box with [plaintiff's] phone"). In yet another case, a district court judge from the Northern District of Illinois enforced the Galaxy S4's arbitration provision, largely for the same reasons present in Sheffer, Han, Carwile, and the instant case. See McNamara, 2014 WL 5543955, at *2 (holding "that the contract between Plaintiffs and Samsung provided reasonable notice of the arbitration clause," which the plaintiffs had "a meaningful opportunity to reject").

3. Norcia is Distinguishable

The only district court to decline Samsung's request to enforce an arbitration clause substantially similar to the Arbitration Provision is Norcia v. Samsung Telecommunications America, LLC, No. 14-CV-00582-JD, 2014 WL 4652332 (N.D. Cal. Sept. 18, 2014). In that case, the plaintiff filed a putative class action alleging that his Galaxy S4 lacked the performance, speed, and memory storage capacity that Samsung had advertised. Id. at *1. Samsung moved to compel arbitration based on an arbitration clause materially identical to the Arbitration Provision, and U.S. District Judge James Donato held a three-hour bench trial on Samsung's motion. Id. Judge Donato ultimately denied the motion to compel arbitration, holding that the plaintiff "'did not enter into an agreement with' Samsung to arbitrate his claims" because he "'had insufficient notice' of Samsung's arbitration provision contained in its warranty." Id. at *8 (quoting Nguyen, 763 F.3d at 1180).

Norcia, however, is distinguishable as a matter of fact and a matter of law. As a factual matter, Norcia was a unique case because the plaintiff there did not actually receive a warranty booklet. The plaintiff, who "was in a hurry to get to work," claimed he "never received the warranty booklet containing the arbitration provision because the Verizon salesperson had unboxed the phone and handed the phone to Mr. Norcia without the packaging that contained the warranty booklet." Norcia, 2014 WL 4652332, at *1-2. Plaintiff here, by contrast, admits that he received the Information Booklet containing the Standard Limited Warranty and Arbitration

Provision in the packaging with his Galaxy SIII. See Granade Decl. ¶ 5; Opp. at 2. It bears mentioning that even though the plaintiff in Norcia "voluntarily decline[d] the box" containing the warranty booklet, Judge Donato nevertheless treated the plaintiff "as if he received the box" because "competent adults are bound by documents, read or unread." 2014 WL 4652332, at *5-6 (alterations and internal quotation marks omitted).

Another factual difference between Norcia and this case is the length of the warranty booklet. In Norcia, Judge Donato emphasized that the arbitration provision could be found "at last, on page 76" of "a 101-page booklet." 2014 WL 4652332, at *6. But see Sheffer, 2014 WL 506556, at *2 (enforcing substantially identical arbitration provision "located on . . . pages 76 to 80 of the 101-page Verizon Booklet"). Here, on the other hand, the Information Booklet is only sixty-three pages long, and the Arbitration Provision begins on page nineteen. See Information Booklet. The Arbitration Provision, moreover, starts on just the fifth page of the Standard Limited Warranty, to which consumers are directed by the table of contents on the Information Booklet's first page. See id.

An important legal development further distinguishes Norcia from the instant case. In Norcia, Judge Donato was particularly concerned with the lack of "words alerting consumers that Samsung's arbitration term was a 'contract' or 'agreement.'" 2014 WL 4652332, at *7; see also id. (emphasizing that California cases distinguishing Windsor Mills involved documents that were "called a 'contract'"). The mere fact, however, that the Arbitration Provision is labeled a "provision," rather than a "contract" or an "agreement," does not render it unenforceable. Indeed, the California Supreme Court, in a case postdating Norcia, enforced an arbitration term titled "ARBITRATION CLAUSE" that was located in a vehicle sales contract. Sanchez, 2015 WL 4605381, at *1, *3. The California Supreme Court did so even though, unlike here, there was no procedure for the consumer to opt out of the arbitration clause. See id. at *7 (explaining that the defendant "does not contend in this court that Sanchez could have opted out of the arbitration agreement"). Nowhere did the Sanchez Court suggest that the arbitration clause, which the

plaintiff argued was "hidden on the back of the contract[]," id. at *3, was unenforceable because it lacked the words "contract" or "agreement."

For these reasons, the Court finds Norcia distinguishable from the instant case.[8] The Court therefore joins the majority of other courts that have compelled arbitration against Samsung Galaxy smartphone purchasers based on arbitration terms substantially identical to the Arbitration Provision here. See McNamara, 2014 WL 5543955, at *2; Sheffer, 2014 WL 506556, at *3-4; Han, 2014 WL 505999, at *3-4; Carwile, 2013 U.S. Dist. LEXIS 185089, at *8-13.

B. Putative Class Claims

As indicated previously, the Arbitration Provision also provides that any disputes arising out of the sale of Plaintiff's Galaxy SIII "shall not be combined or consolidated with a dispute involving any other person's or entity's Product or claim, and specifically, without limitation of the foregoing, shall not under any circumstances proceed as part of a class action." Information Booklet at 19. After the U.S. Supreme Court's ruling in AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (2011), such class action waivers are enforceable in California, see Sanchez, 2015 WL 4605381, at *3, *14-15 (enforcing arbitration clause's class action waiver and explaining that, after Concepcion, "the FAA requires enforcement of class waivers in consumer arbitration agreements and preempts state law to the contrary").

Because the Arbitration Provision bars Plaintiff from combining or consolidating his individual claims into a class action, Plaintiff's putative class claims are hereby dismissed with prejudice. See, e.g., Sheffer v. Samsung Telecomms. Am., LLC, No. CV 13-3466-GW AJWX, 2014 WL 792124, at *1 (C.D. Cal. Feb. 6, 2014) ("Because the arbitration agreement calls for individual arbitration of all of Plaintiff's claims in this action, Plaintiff's class-based claims are

[8] The Court notes that Norcia is currently on appeal to the Ninth Circuit. See Norcia v. Samsung Telecomms. Am., LLC, No. 14-16994 (9th Cir. appeal filed Oct. 10, 2014). Because Norcia does not constitute a final judgment, the parties agree that there is no basis for Plaintiff to assert offensive non-mutual collateral estoppel. See Mot. at 15 n.12; Opp. at 17. In contrast, the appeal in Sheffer has been dismissed. See Sheffer v. Samsung Telecomms. Am., LLC, No. 14-55359 (9th Cir. appeal dismissed Dec. 23, 2014).

dismissed with prejudice.").

IV. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendants' motion to compel arbitration. Accordingly, the Court DENIES as moot Defendants' motion to dismiss and Plaintiff's motion to transfer venue. See Langston v. 20/20 Cos., Inc., No. EDCV 14-1360 JGB SPX, 2014 WL 5335734, at *9 (C.D. Cal. Oct. 17, 2014) (granting motion to compel arbitration and denying as moot motion to transfer venue); In re Apple iPhone 3G Prods. Liab. Litig., 859 F. Supp. 2d 1084, 1097 (N.D. Cal. 2012) (granting motion to compel arbitration and denying as moot motion to dismiss).

Plaintiff's individual claims are hereby DISMISSED WITHOUT PREJUDICE so that the parties may pursue arbitration. See Sparling v. Hoffman Constr. Co., 864 F.2d 635, 638 (9th Cir. 1988) (explaining that dismissal is appropriate where "the arbitration clause [is] broad enough to bar all of the plaintiff's claims"). Plaintiff's putative class claims are hereby DISMISSED WITH PREJUDICE.

The Clerk shall close the case file.

IT IS SO ORDERED.

Dated: August 10, 2015

Lucy H. Koh

LUCY H. KOH
United States District Judge

United States District Court
Northern District of California