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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEVEN NEMEC,)	Case No. 5:14-cv-01343-PSG
)	
Plaintiff,)	ORDER DENYING MOTIONS TO
v.)	COMPEL ARBITRATION AND
)	DENYING MOTION TO DISMISS AS
FORREST DAVID LINEBARGER <i>et al</i> ,)	MOOT
)	
Defendants.)	(Re: Docket Nos. 26, 27, 30)
_____)	
)	
AND RELATED CROSS-ACTION)	
_____)	

The court has three motions before it: two motions to compel arbitration of the disputes underlying this lawsuit and one motion to dismiss the operative complaint and cross-complaint for failure to state a claim. Plaintiff Steven Nemec and Cross-Complainants Justin Schuh and Catherine Nguyen oppose the motions to compel arbitration, arguing that the arbitration clause is used to effect the fraudulent scheme underlying the suit.¹ The Supreme Court has long held that

¹ See Docket Nos. 46 at 4; 50 at 1-2.

1 when an arbitration clause is alleged to be part of a fraudulent scheme or obtained by fraudulent
2 means, a federal court must determine the validity of the clause before ordering its enforcement.²
3 Here, however, despite Nemec, Schuh and Nguyen’s arguments in their oppositions to the motions
4 to compel, none of them can point to a single piece of evidence in the record or a single allegation
5 in the complaints indicating that the arbitration clause was a part of the fraudulent scheme. In fact,
6 neither complaint makes any mention of the arbitration clause whatsoever.

7
8 Doubts and failures of pleading generally should be resolved in favor of arbitration.³

9 Nonetheless, when the arbitration agreement is alleged to have been fraudulently obtained or to be
10 a part of a fraudulent scheme, the Ninth Circuit has held that trial courts commit reversible error if
11 they enforce an arbitration agreement because of deficiencies in the pleadings, even when those
12 deficiencies come to light a year after the beginning of litigation.⁴ Instead, under the liberal
13 standard of Rule 15(a) of the Federal Rules of Civil procedure, the court should grant leave to
14 amend the complaint and remedy the deficiencies.⁵ Though neither Cross-Complainants nor
15 Plaintiff formally move for leave to amend their complaint to cure this particular deficiency, in
16 briefing and at oral argument, both clearly request leave to cure issues raised in the motion to
17 dismiss.

18
19 In accordance with the binding precedent of the Circuit and in light of allegations that the
20 arbitration clause operates as part of a fraudulent scheme, the motions to compel arbitration are

21
22 ² See *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967); *Moseley v. Elec.*
23 *& Missile Facilities, Inc.*, 374 U.S. 167, 171 (1963); see also *Nagrampa v. MailCoups, Inc.*, 469
24 F.3d 1257, 1269 (9th Cir. 2006) (recognizing that “challenges specifically to the arbitration
25 agreement were for the court to decide”) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*,
388 U.S. 395, 404 (1967)).

26 ³ *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 25 (1983)

27 ⁴ See *Letizia v. Prudential Bache Sec., Inc.*, 802 F.2d 1185, 1190 (9th Cir. 1986) (concluding that
28 “the district court abused its discretion in denying Letizia the opportunity to amend his complaint
and to prove his allegations concerning the enforceability of the arbitration agreement.”).

⁵ See *id.*

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DENIED. Nemec, Schuh and Nguyen are granted leave to amend their complaints under Rule 15(a). Any amended pleadings shall be filed within thirty days. Defendants' motion to dismiss is DENIED AS MOOT in light of the forthcoming amended pleadings, without prejudice to renewing the motion after receiving the amended complaints.

IT IS SO ORDERED.

Dated: June 23, 2014



PAUL S. GREWAL
United States Magistrate Judge