

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SIAMAK BASTAMI,
Plaintiff,

v.

SEMICONDUCTOR COMPONENTS
INDUSTRIES, LLC,
Defendant.

Case No. 17-CV-00407-LHK

**ORDER GRANTING MOTION TO
REMAND**

Re: Dkt. No. 10

Plaintiff Siamak Bastami (“Plaintiff”) brings this suit against Defendant Semiconductor Components Industries, LLC (“Defendant”) for employment discrimination. Before the Court is Plaintiff’s Motion to Remand. ECF No. 10 (“Mot.”). Having considered the parties’ briefing, the relevant law, and the record in this case, the Court GRANTS Plaintiff’s Motion to Remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 14, 2016, Defendant sent Plaintiff a written offer of employment. ECF No. 10-1, Declaration of Scardigli (“Scardigli Decl.”) Ex. A. Plaintiff accepted the offer, and was employed by Defendant as a System Applications, Senior Manager from January 25, 2016 to May 27, 2016. Complaint, ECF No. 1-1 (“Compl.”) ¶ 8. Plaintiff alleges that he was disabled because he suffered from kidney failure, which required weekly dialysis. *Id.* ¶ 9. Plaintiff alleges that, on

1 May 27, 2016, Defendant terminated Plaintiff because of Plaintiff’s disability. *Id.* Moreover,
2 Plaintiff alleges that Defendant “refused to provide reasonable accommodation for [Plaintiff’s]
3 disability in the form of, for instance, a sufficient leave of absence.” *Id.* ¶ 10. Defendant’s leave
4 policy allowed 30 days of medical leave, and Plaintiff took medical leave from April 27, 2016 to
5 May 27, 2016. *Id.* When Plaintiff allegedly requested a “brief extension,” Defendant refused, and
6 instead, terminated Plaintiff. *Id.*

7 On July 8, 2016, Plaintiff filed a complaint with the California Department of Fair
8 Employment and Housing (“DFEH”). *Id.* ¶ 12. The DFEH issued Plaintiff a right-to-sue notice.

9 On November 14, 2016, Plaintiff filed the instant suit in the Superior Court of California
10 for the County of Santa Clara. *See* Compl. Defendant alleged three causes of action for violation
11 of California’s Fair Employment and Housing Act (the “FEHA”): (1) disability discrimination, (2)
12 failure to accommodate, and (3) failure to prevent discrimination. *Id.*

13 On January 26, 2017, Defendant removed the instant suit to federal court based on
14 diversity jurisdiction. ECF No. 1 (“Notice of Removal”). Plaintiff is a California resident, and
15 Defendant is a corporation incorporated in Delaware with its primary place of business in Arizona.
16 *Id.* Defendant asserts that the amount in controversy is at least \$117,000. *Id.*

17 On February 9, 2017, Plaintiff filed the instant motion to remand. *See* Mot. Plaintiff’s
18 motion for remand is based on a forum selection clause in the January 14, 2016 written offer of
19 employment sent from Defendant to Plaintiff. Scardigli Decl. Ex. A. On February 23, 2017,
20 Defendant filed an opposition to Plaintiff’s motion to remand, ECF No. 18 (“Opp’n”), and on
21 March 2, 2017, Plaintiff filed a reply, ECF No. 19 (“Reply”).

22 **II. LEGAL STANDARD**

23 A suit may be removed from state court to federal court only if the federal court would
24 have had subject matter jurisdiction over the case. 28 U.S.C. § 1441(a); *see Caterpillar Inc. v.*
25 *Williams*, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally could have been filed
26 in federal court may be removed to federal court by the defendant.”). “In civil cases, subject
27 matter jurisdiction is generally conferred upon federal district courts either through diversity

1 jurisdiction, 28 U.S.C. § 1332, or federal question jurisdiction, 28 U.S.C. § 1331.” *Peralta v.*
2 *Hispanic Bus., Inc.*, 419 F.3d 1064, 1068 (9th Cir. 2005). If it appears at any time before final
3 judgment that the federal court lacks subject matter jurisdiction, the federal court must remand the
4 action to state court. 28 U.S.C. § 1447(c).

5 The party seeking removal bears the burden of establishing federal jurisdiction. *Provincial*
6 *Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). “The removal
7 statute is strictly construed, and any doubt about the right of removal requires resolution in favor
8 of remand.” *Moore–Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing
9 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)).

10 Even if a Court has subject matter jurisdiction over a suit that has been removed, a suit
11 may be remanded based on a forum selection clause. *See Kamm v. ITEX Corp.*, 568 F.3d 752, 756
12 (9th Cir. 2009) (“[A] forum selection clause is similar to other grounds for not exercising
13 jurisdiction over a case, such as abstention in favor of state court jurisdiction under *Younger v.*
14 *Harris*, 401 U.S. 37 (1971), and related abstention cases, or a refusal to exercise supplemental
15 jurisdiction and a resulting remand to state court under 28 U.S.C. § 1367(c)); *QSR Mgmt., Inc. v.*
16 *Dunkin Brands, Inc.*, 2008 WL 2856456, at *1 (C.D. Cal. Mar. 23, 2008) (“A court has inherent
17 authority to remand an action to state court to enforce a forum selection agreement” (citation
18 omitted)); *Comerica Bank v. Whitehall Specialties, Inc.*, 352 F. Supp. 2d 1077, 1079–80 (C.D.
19 Cal. 2004) (“The enforcement of a forum selection clause is a proper basis for remanding a
20 removed case to state court”); *Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.*, 741 F.2d
21 273, 275, 280 (9th Cir. 1984) (affirming the district court’s remand of an action to state court on
22 grounds that a valid and enforceable forum selection clause governed).

23 In cases based on diversity jurisdiction, federal law governs the interpretation and
24 enforceability of forum selection clauses. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509,
25 513 (9th Cir. 1988) (“We conclude that the federal procedural issues raised by forum selection
26 clauses significantly outweigh the state interests, and the federal rule announced in [*M/S Bremen v.*
27 *Zapata Off–Shore Co.*, 407 U.S. 1, 12 (1972)] controls enforcement of forum clauses in diversity
28

1 cases Moreover, because enforcement of a forum clause necessarily entails interpretation of
2 the clause before it can be enforced, federal law also applies to interpretation of forum selection
3 clauses.” (citation omitted)).

4 Under Ninth Circuit and United States Supreme Court precedent, forum selection clauses
5 are presumptively valid and enforceable “absent some compelling and countervailing reason.”
6 *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (quoting *Bremen*, 407 U.S.
7 at 12). The Ninth Circuit has identified three “compelling” reasons that would permit a court to
8 disregard a forum selection clause: “(1) ‘if the inclusion of the clause in the agreement was the
9 product of fraud or overreaching’; (2) ‘if the party wishing to repudiate the clause would
10 effectively be deprived of his day in court were the clause enforced’; and (3) ‘if enforcement
11 would contravene a strong public policy of the forum in which suit is brought.’” *Id.* (quoting
12 *Richards v. Lloyd’s of London*, 135 F.3d 1289, 1294 (9th Cir. 1998)).

13 **III. DISCUSSION**

14 The parties do not dispute that this Court has subject matter jurisdiction over this case
15 based on diversity jurisdiction. The Court agrees. Under 28 U.S.C. § 1332, diversity jurisdiction
16 exists if the Plaintiff and Defendant are citizens of different states and the amount in controversy
17 exceeds \$75,000. Here, Plaintiff is a resident of California; Defendant is a company incorporated
18 in Delaware with its primary place of business in Arizona; and the amount in controversy exceeds
19 \$75,000. Notice of Removal ¶ 18. Accordingly, the Court has diversity jurisdiction.

20 Regardless, Plaintiff argues that the instant suit should be remanded to the California
21 Superior Court for the County of Santa Clara based on the forum selection clause in Defendant’s
22 January 14, 2016 written offer of employment to Defendant. The forum selection clause states the
23 following:

24 **Governing Law and Venue**

25
26 Except for actions for injunctive or other equitable relief, which may be brought
27 in any court of competent jurisdiction, any legal suit, action or proceeding arising
28 out of or relating to this offer letter shall be commenced in a federal court in the
District of California or in state court in the County of Santa Clara, California,

1 and each party hereto irrevocably submits to the exclusive jurisdiction and venue
2 of any such court in any such suit, action, or proceeding.

3 Scardigli Decl. Ex. A at 1–2. Plaintiff argues that even though this forum selection clause allows
4 a case to be commenced in either federal court or state court, once the case has been brought in
5 state court, Defendant cannot change forums by removal.

6 In response, Defendant argues that the forum selection clause does not apply to the instant
7 suit because (1) Plaintiff seeks injunctive relief in addition to compensatory damages, and (2) the
8 instant suit does not “aris[e] out of or relat[e] to th[e] offer letter.” Moreover, Defendant argues
9 that even if the forum selection clause is applicable, the terms of the forum selection clause allow
10 removal.¹

11 The Court notes that the parties also disagree about how ambiguities in a forum selection
12 clause should be interpreted on a motion to remand. Therefore, the Court first addresses how such
13 clauses should be interpreted. The Court then addresses whether the terms of the forum selection
14 clause require the instant case to be remanded. Finally, the Court discusses whether the forum
15 selection clause applies to the instant case.²

16 ¹ Defendant does not argue that the forum selection clause is unenforceable for any of the
17 “compelling reasons” described by the Ninth Circuit in *Murphy*, as set forth above in Section II.
18 Thus, if the forum selection clause applies and its terms prevent removal, the Court need not
19 discuss whether the forum selection clause is otherwise unenforceable.

20 ² As an initial matter, Defendant argues that the instant case cannot be remanded because the offer
21 letter containing the forum selection clause, which is attached to the instant motion, has not been
22 properly authenticated. Defendant’s argument fails. The declaration authenticating the offer letter
23 indicates that *Defendant* produced the offer letter to *Plaintiff* as part of Plaintiff’s personnel file.
24 See Scardigli Decl. ¶ 6 (indicating that executed agreement was “produced to Plaintiff from
25 Defendant”). It is disingenuous for Defendant to now assert that the offer letter is not properly
26 authenticated. Regardless, the Court need not determine whether the offer letter is properly
27 authenticated because Plaintiff’s complaint reproduces the entirety of the forum selection clause
28 contained in the offer letter and identifies it as the relevant clause governing forum in the instant
suit. Compl. ¶ 6. Defendant’s answer in state court and Defendant’s Notice of Removal do not
assert that the forum selection clause in Plaintiff’s complaint is inaccurate or the wrong contractual
provision. See Notice of Removal & Ex. B. On a motion to remand, “the Court accepts the
allegations of plaintiff’s complaint as true.” *Clancy v. Bay Area Bank*, 1997 WL 182291, at *3
(N.D. Cal. Apr. 7, 1997), *aff’d*, 141 F.3d 1174 (9th Cir. 1998); *City of Ann Arbor Emps. Ret. Sys.*
v. Gecht, 2007 WL 760568, at *6 (N.D. Cal. Mar. 9, 2007) (“When considering a motion to
remand, the district court accepts as true all relevant allegations contained in the complaint and
construes all factual ambiguities in favor of the plaintiff.” (quoting *Fed. Ins. Co. v. Tyco Int’l Ltd.*,
422 F. Supp. 2d 357, 391 (S.D.N.Y. 2006))). Therefore, because Plaintiff’s complaint alleges that
the forum selection clause is the relevant contractual provision governing forum, and Defendant
does not argue otherwise, the Court may properly consider the forum selection clause on the

1 Cir. 1999) (“[L]itigation-based waivers must be distinguished from [] contractual waivers.”);
2 *Foster v. Chesapeake Ins. Co.*, 933 F.2d 1207, 1217 n.15 (3d Cir. 1991) (same). The Eleventh and
3 Third Circuits apply the clear and unequivocal standard to litigation based waivers because
4 “[o]therwise, parties would be put in the difficult position of, on the one hand, not taking any
5 action in state court in order to preserve definitively the right to remove and, on the other hand,
6 running the risk of a default judgment unless they take steps to defend the action in state court.”
7 *Snapper*, 171 F.3d at 1261 (citing *Foster*, 933 F.2d at 1217 n.15).

8 However, in the context of forum selection clause based waivers, the Eleventh and Third
9 Circuits have held that applying the clear and unequivocal standard would “go[] against the
10 general trend of interpreting the removal statutes against removal and probably springs from the
11 outdated notion that forum selection clauses are disfavored.” *Id.* (citing *Foster*, 933 F.2d at 1217
12 n.15). Although such clauses were at one time held to be unenforceable as “contrary to public
13 policy,” the United States Supreme Court’s opinion in *Bremen*, 407 U.S. at 12, stated that “this
14 notion is old-fashioned and contrary to freedom of contract.” *Foster*, 933 F.2d at 1217 n.15.
15 Thus, the clear and unequivocal standard should not be applied to forum selection clause based
16 waivers of the right of removal.

17 The Court notes that the Sixth Circuit has applied the clear and unequivocal standard to
18 forum selection clause based waivers. *See, e.g., Regis Assocs. v. Rank Hotels (Mgmt.) Ltd.*, 894
19 F.2d 193, 195 (6th Cir. 1990) (“[T]he case law makes it clear that such waiver must be clear and
20 unequivocal.”). However, Sixth Circuit law differs from that of the Ninth, Third, and Eleventh
21 Circuits. Moreover, the *Regis* court’s determination that the clear and unequivocal standard
22 applies to forum selection clause based waivers relies primarily on district court decisions made in
23 the litigation based waiver context. *Id.* at 195 (relying on *Kiddie Rides USA, Inc. v. Elektro-*
24 *Mobiltechnik GMBH*, 579 F. Supp. 1476, 1479 (C.D. Ill. 1984) (“The actions taken by the
25 Defendant combined with the untimeliness of the removal, are sufficient to constitute a waiver on
26 the part of the Defendant.”)). Thus, the Court finds the Sixth Circuit’s rationale to be
27 unpersuasive.

1 For the foregoing reasons, the Court does not apply the clear and unequivocal standard to
2 forum selection clause based waivers of the right of removal.

3 **B. Whether the Forum Selection Clause Requires Remand**

4 The Court next turns to whether the forum selection clause requires remand in the instant
5 case. The Ninth Circuit has held that where a forum selection clause requires a case to be litigated
6 in state court, removal is inappropriate. For example, in *Docksider*, 875 F.2d 762, the Ninth
7 Circuit addressed a forum selection clause that stated that “[v]enue of any action brought
8 hereunder shall be deemed to be in Gloucester County, Virginia.” *Id.* at 763. The Ninth Circuit
9 held that this clause “clearly designate[d] the state court in Gloucester County, Virginia, as the
10 exclusive forum.” *Id.*

11 In contrast, in *Council of Laborers*, 69 F.3d 1034, the Ninth Circuit addressed a forum
12 selection clause that stated that “the decision of a permanent arbitrator shall be enforceable by a
13 petition to confirm an arbitration award filed in the Superior Court of the City and County of San
14 Francisco.” *Id.* at 1036. The Ninth Circuit held that because the language was not mandatory, i.e.,
15 did not designate the Superior Court of the City and County of San Francisco as the exclusive
16 forum, the forum selection clause did not preclude removal. *Id.*

17 Here, the forum selection clause contains mandatory and exclusive language. *See* Scardigli
18 Decl. Ex. A (each party “irrevocably submits to the exclusive jurisdiction of any such court”).
19 However, the forum selection clause here refers to two different forums: state court in the County
20 of Santa Clara and federal court in the “District of California.”³ Unlike in *Docksider* and *Council*
21 *of Laborers*, where the question was whether the language was sufficiently mandatory and
22 exclusive, the question here is whether the mandatory and exclusive language applies to the forum
23 where Plaintiff first brought suit, thus preventing removal by Defendant.

24 As noted above, the forum selection clause states that “any legal suit, action or
25

26 ³ The Court notes that there is no single “District of California,” but four such districts: the
27 Northern, Eastern, Central, and Southern Districts. A single “District of California” has not
28 existed since the 1800s. However, the Court construes this phrase to mean any federal district
court located in California.

1 proceeding . . . shall be commenced in a federal court in the District of California or in state court
2 in the County of Santa Clara, California, and each party hereto irrevocably submits to the
3 exclusive jurisdiction and venue of any such court in any such suit, action, or proceeding.”
4 Scardigli Decl. Ex. A. Plaintiff argues that this forum selection clause unambiguously indicates
5 that Defendant has “irrevocably submit[ted] to the exclusive jurisdiction and venue” of the court
6 where an action is commenced. In contrast, Defendant argues that the forum selection clause
7 indicates that the parties consented to the jurisdiction of both the federal and state forum and that
8 the clause does not limit either party’s right of removal from the state to the federal forum.

9 The Court agrees with Plaintiff that the forum selection clause requires remand of the
10 instant case. The Court reaches this conclusion because the forum selection clause states that
11 Defendant “irrevocably submits to the exclusive jurisdiction of any such court in any such suit,
12 action or proceeding.” Scardigli Decl. Ex. A. The instant suit was filed in the California Superior
13 Court for the County of Santa Clara, one of the courts to whose “exclusive jurisdiction and venue”
14 Defendant agreed to “irrevocably submit[.]” Thus, because Defendant has agreed to the
15 “exclusive jurisdiction and venue” of one of the specified courts in the instant suit, the mandatory
16 language of the forum selection clause precludes Defendant from changing that exclusive
17 jurisdiction and venue through removal. *See Docksider*, 875 F.2d at 763 (holding that clause
18 mandating a certain forum prevents removal).

19 Regardless, Defendant argues that Defendant’s submission to the “exclusive jurisdiction
20 and venue of any such court” actually meant that Defendant was “irrevocably submit[ting] to the
21 exclusive jurisdiction” of both state court *and* federal court, and thus removal is allowed.
22 However, the wording of the forum selection clause precludes such an interpretation. The forum
23 selection clause states that Defendant submits to the exclusive jurisdiction of “any such court in
24 any such suit” rather than “any such courts” or “such courts.” The use of the singular “court”
25 rather than plural “courts” indicates that Defendant only has submitted to the exclusive jurisdiction
26 and venue of a single court in “any such suit.” *Compare S. Ohio Sand, LLC v. Preferred*
27 *Proppants, LLC*, 2016 WL 1457931, at *2 (N.D. Ohio Apr. 14, 2016) (holding that statement that

1 clause stating that “each Party irrevocably submits to the exclusive jurisdiction of such courts” did
2 not waive the right to remove because “[i]n using the plural term “courts”, the parties reflected
3 some acknowledgment that cases could be removed from state court”); *Spenlinhaur v. R.R.*
4 *Donnelley & Sons Co.*, 534 F. Supp. 2d 162, 162–63 (D. Me. 2008) (finding no waiver of removal
5 where defendant irrevocably submitted “to the exclusive jurisdiction of the chosen courts”). Thus,
6 because the suit commenced in Santa Clara County Superior Court, and Defendant submitted to
7 that court’s exclusive jurisdiction, a change in jurisdiction and venue cannot occur.

8 Defendant also argues that the court in which Plaintiff decided to commence the instant
9 suit is not necessarily the Court to whose “exclusive jurisdiction and venue” Defendant must
10 submit. That is, Defendant argues that even if the suit begins in state court, Defendant can choose
11 to instead “irrevocably submit” to the exclusive jurisdiction and venue of federal court after
12 removal. However, the forum selection clause does not provide the defendant in a lawsuit such a
13 choice. The forum selection clause mandates that a plaintiff bring suit in either state court in Santa
14 Clara County or federal court in the “District of California,” and indicates that each party
15 “irrevocably submits,” in the present tense, to “any such court in any such suit.” Thus, the forum
16 selection clause does not provide Defendant the choice to submit to the exclusive jurisdiction of a
17 different court from the one in which the suit was filed because Defendant has *already* submitted
18 to the exclusive jurisdiction of “any such court” at the time a suit is brought. “[I]t would seem odd
19 for parties who ‘irrevocably consent’ to sue one another (if at all) in [California] federal *or* state
20 court to also agree that they can challenge (by way of removal) each others’ decision to file in
21 [California] state court.” *InterDigital, Inc. v. Wistron Corp.*, 2015 WL 4537133, at *1 (D. Del.
22 June 18, 2015).

23 Even if the forum selection clause was ambiguous and could be read in the manner
24 asserted by Defendant, the Court would still find removal to be appropriate. Any ambiguity in a
25 contract must be interpreted against the drafter, including a forum selection clause. *Consul*, 802
26 F.2d at 1149 (“It is axiomatic that ambiguities in contractual language are construed against the
27 drafter.”). The forum selection clause is written as part of an offer letter from Defendant to

1 Plaintiff and was written by Defendant. Thus, to the extent the forum selection clause is
2 ambiguous, it must be construed against Defendant and against removal.

3 Accordingly, the Court finds that the forum selection clause does not allow removal from
4 federal court to state court in the instant case.

5 **C. Applicability of the Forum Selection Clause**

6 As noted above, the forum selection clause states that “[e]xcept for actions for injunctive
7 or other equitable relief, . . . any legal suit, action or proceeding arising out of or relating to this
8 offer letter shall be commenced in a federal court in the District of California or in state court in
9 the County of Santa Clara, California, and each party hereto irrevocably submits to the exclusive
10 jurisdiction and venue of any such court in any such suit, action, or proceeding.” Scardigli Decl.
11 Ex. A at 1–2 (emphases added).

12 Defendant argues that even if the forum selection clause does not allow removal, the
13 clause, for two reasons, does not apply to the instant suit. First, Defendant argues that the forum-
14 selection clause does not apply because it contains an exception for “actions for injunctive or other
15 equitable relief” (hereafter, the “injunctive or equitable relief exception”), and Plaintiff’s
16 complaint includes a prayer for injunctive and declaratory relief. Scardigli Decl. Ex. A. Second,
17 Defendant argues that the forum selection clause does not apply because even though the forum
18 selection clause only applies to “action[s] or proceeding[s] arising out of or relating to this offer
19 letter,” the instant suit does not arise out of the offer letter. The Court addresses each argument in
20 turn.

21 **1. Injunctive or Equitable Relief Exception**

22 The Court first addresses whether the prayer for injunctive and declaratory relief in
23 Plaintiff’s complaint in the state court action prevents the forum selection clause from applying to
24 the instant suit. Plaintiff’s complaint contains three FEHA causes of action: (1) disability
25 discrimination, (2) failure to accommodate, and (3) failure to prevent discrimination. Compl.
26 ¶¶ 14–28. Each of these causes of action is based on allegations that Defendant discriminated
27 against Plaintiff when Defendant refused to give Plaintiff extra medical leave for his disability and
28

1 terminated Plaintiff's employment. *See id.* ¶¶ 16 (“[A]s set forth above, Defendant[]
2 discriminated against Bastami based on actual and perceived disability.”), 21 (“Defendants refused
3 to provide Bastami with reasonable accommodation for his known disability.”). Under each cause
4 of action, Plaintiff does not request injunctive or declaratory relief, but seeks “damages as set forth
5 below.” Compl. ¶¶ 18, 23, 28. In the prayer for relief, however, in addition to “compensatory,
6 special, and general damages,” Plaintiff requests injunctive and declaratory relief for Defendant to
7 halt its discriminatory practices, to provide training for compliance with FEHA, and to develop a
8 policy that will prevent discrimination. Compl. at 5. Declaratory relief, like injunctive relief, is a
9 remedy that “sounds in equity.” *Premiere Radio Networks, Inc. v. Hillshire Brands Co.*, 2013 WL
10 5944051, at *3 (C.D. Cal. Nov. 4, 2013).

11 As noted above, the forum selection clause includes an exception for “actions for
12 injunctive or other equitable relief.” However, the forum selection clause does not address the
13 parties’ expectations where the plaintiff seeks *both* compensatory damages and injunctive or other
14 equitable relief in the same suit for the same causes of action. There are three potential
15 interpretations of the injunctive or equitable relief exception. A suit could be an action for
16 injunctive or other equitable relief where a plaintiff (1) seeks solely injunctive or equitable relief,
17 (2) seeks primarily or predominantly injunctive or equitable relief, or (3) includes a prayer for
18 injunctive or equitable relief in the complaint that is not the primary or predominant relief sought.
19 Defendant argues for the third of these three interpretations; Plaintiff argues for the first or second
20 of these three interpretations. The Court first interprets the injunctive or equitable relief exception,
21 and then discusses whether the instant suit falls within the exception.

22 For the reasons discussed below, the Court finds that the plain meaning of the forum
23 selection clause supports Plaintiff’s rather than Defendant’s interpretation of the injunctive or
24 equitable relief exception, and that the exception does not apply where a complaint simply
25 includes a prayer for injunctive or equitable relief that is not the primary or predominant relief
26 sought. As noted above, the forum selection clause states that it does not apply to “actions for
27 injunctive and other equitable relief.” This language does not expand the exception to “any

1 actions in which injunctive or other equitable relief is sought.” Instead, the language of the clause
2 states that the “action[]” itself should be for injunctive or other equitable relief. It would be a
3 strained interpretation of the injunctive or equitable relief exception and its focus on the entire
4 “action[]” to find that a prayer for injunctive or equitable relief that is not the primary or
5 predominant relief sought in the suit still transforms the entire suit into an “action[] for injunctive
6 or other equitable relief.”

7 Moreover, as noted above, “[i]t is axiomatic that ambiguities in contractual language are
8 construed against the drafter.” *Consul*, 802 F.2d at 1149. Thus, to the extent the injunctive or
9 equitable relief exception is ambiguous as to the three interpretations described above, the Court
10 must construe the exception against Defendant. Therefore, the Court finds that the injunctive or
11 equitable relief exception to the forum selection clause does not extend to circumstances where a
12 plaintiff includes a prayer for injunctive or equitable relief that is not the primary or predominant
13 relief sought.

14 Accordingly, the injunctive or equitable relief exception to the forum selection clause may
15 apply only where either (1) injunctive or equitable relief is the sole remedy sought by the plaintiff,
16 or (2) injunctive or equitable relief is the primary or predominant remedy sought by the plaintiff.
17 The Court need not determine which of these two interpretations of the injunctive or equitable
18 relief exception is correct because the Court finds below that either interpretation would require
19 remand.⁴ The Court addresses each interpretation in turn.

20 _____
21 ⁴ However, in other contexts, courts have generally looked to what type of relief predominates to
22 determine whether a suit is primarily or predominantly seeking equitable relief or damages. For
23 example, in *Danford v. Schwabacher*, 488 F.2d 454 (9th Cir. 1973), the Ninth Circuit discussed
24 whether a complaint was equitable or “legal” for the purposes of determining whether the stay of a
25 case pending arbitration could be appealed (if a claim was a “legal” action rather than a suit in
26 equity, it could be appealed). *Id.* at 473. The Ninth Circuit held that to determine whether a suit
27 was a “legal” action rather than an action in equity, courts must look to “the face of [the]
28 complaint” to determine whether “the legal or the equitable aspects predominate.” *Id.* Similarly,
in *Mach-Tronics, Inc. v. Zirpoli*, 316 F.2d 820 (9th Cir. 1963), the Ninth Circuit held that a case
was “a suit in equity seeking an injunction” because even though compensatory damages were
pled as part of the suit, “[t]he allegation of damages is apparently incidental to the proceeding for
equitable relief.” *Id.* at 829; *see also Dhamer v. Bristol-Myers Squibb Co.*, 183 F.R.D. 520, 528
(N.D. Ill. 1998) (“When an action for creation of a medical monitoring fund is primarily a suit for
damages or incidental to claims for money damages, however, it is not appropriate for class

1 As to the first interpretation, injunctive and equitable relief are certainly not the *sole*
2 remedies pled in Plaintiff’s complaint because Plaintiff’s complaint seeks damages for each FEHA
3 cause of action. Thus, if the injunctive or equitable relief exception only applies if the sole
4 remedy sought in the complaint is injunctive or equitable, the exception would not apply to the
5 instant case.

6 As to the second interpretation, for the following reasons, injunctive and equitable relief
7 are not the primary or predominant forms of relief sought by Plaintiff’s complaint. For each cause
8 of action under the FEHA, Plaintiff does not seek injunctive or declaratory relief but solely states
9 that he “seeks damages as set forth below.” Compl. ¶¶ 18, 23, 28. Injunctive relief is mentioned
10 once in the introduction of the complaint, and then listed a second time in the prayer for relief, and
11 is not otherwise mentioned in the complaint. Similarly, the complaint mentions declaratory relief
12 only once in the prayer for relief. Under similar circumstances, this Court has held that the causes
13 of action in a complaint did not clearly seek injunctive relief because the plaintiff had only
14 mentioned injunctive relief in the prayer for relief and had not connected that prayer for relief to
15 the causes of action. *See Madani v. Cty. of Santa Clara*, 2017 WL 1092398, at *11 (N.D. Cal.
16 Mar. 23, 2017) (holding that a prayer for injunctive relief did not clearly indicate that Plaintiff
17 sought injunctive relief under any specific cause of action); *see also Creighton v. City of*
18 *Livingston*, 628 F. Supp. 2d 1199, 1216 (E.D. Cal. 2009) (same). Similarly here, Plaintiff’s
19 mention of injunctive and declaratory relief does not transform the FEHA causes of action for
20 monetary damages into causes of action for injunctive relief. Thus, because the causes of action
21 themselves are not causes of action for injunctive or equitable relief, such a prayer does not
22 transform the entire suit into an “action[] for injunctive or other equitable relief.”

23 Moreover, as noted above, the prayer for injunctive and declaratory relief seeks
24

25 certification [as an injunctive class]”). *Mach-Tronics* and *Dhamer* indicate that where a suit is
26 primarily or predominantly one for equitable relief, and money damages are incidental, the suit is
27 still considered a suit for equitable relief, and vice versa. Therefore, these cases confirm that to
determine whether a suit is an “action[] for injunctive or equitable relief,” courts look to whether
the equitable aspects of the suit predominate.

1 prospective relief that would require Defendant to halt discrimination in the future. However,
2 because Plaintiff’s suit is brought against Defendant for a single incident in which Plaintiff was
3 fired from his job due to disability discrimination, and Plaintiff mentions no facts to support an
4 allegation of continuing discrimination, there are no facts that support Plaintiff’s prayer for
5 prospective injunctive and declaratory relief. Therefore, the Court concludes that Plaintiff’s
6 request for injunctive and equitable relief is not the primary or predominant relief sought in the
7 instant suit. Thus, the injunctive or equitable relief exception does not apply to the instant suit.
8 Accordingly, the Court finds that the injunctive or equitable relief exception does not preclude the
9 application of the forum selection clause to the instant suit.

10 **2. Whether the Instant Suit Arises Out Of or Relates To the Offer Letter**

11 Defendant argues that the forum selection clause does not apply because the forum
12 selection clause only applies to “action[s] or proceeding[s] arising out of or relating to this offer
13 letter.” Defendant contends that the FEHA causes of action are statutory causes of action that do
14 not arise from or relate to the offer letter. In response, Plaintiff argues that the statutory causes of
15 action at least “relate to” the offer letter because the causes of action arise from Defendant’s
16 termination of the employment relationship created by the offer letter.

17 The Ninth Circuit has addressed similar “arising out of or relating to language” albeit in
18 the context of arbitration provisions. *See Cape Flattery Ltd. v. Titan Mar., LLC*, 647 F.3d 914,
19 922 (9th Cir. 2011). In general, when the phrase “arising out of or relating to” is used in an
20 arbitration provision, the “parties intend to include a broad arbitration provision.” *Id.*; *see also*
21 *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999) (such language “reaches every
22 dispute between the parties having a significant relationship to the contract and all disputes having
23 their origin or genesis in the contract”). Thus, in *Smith v. VMware, Inc.*, 2016 WL 54120, at *6–7
24 (N.D. Cal. Jan. 5, 2016),⁵ a court in this district held that an arbitration provision that stated that it

25
26
27 ⁵ The caption for this case in Westlaw states the defendant’s name as “Vmware, Inc.” However,
28 the correct name for the defendant is “VMware, Inc.,” which is used throughout the district court
order in that case. Therefore, the Court uses the case name *Smith v. VMware* in this order.

1 included disputes “arising under or relating to” an employment agreement, included claims for
2 retaliation and wrongful termination. *Id.* The *VMware* court reasoned that “the [employment
3 agreement] sets forth the relationship between the parties and their rights therein; thus, both
4 retaliation and wrongful termination claims, at the very least, relate to the parties’ relationship.”
5 *Id.*

6 Similarly, in the context of forum selection clauses, district courts have held that the term
7 “relating to” is “generally construed quite broadly.” *Kebb Mgmt., Inc. v. Home Depot U.S.A., Inc.*,
8 59 F. Supp. 3d 283, 289 (D. Mass. 2014) (holding that forum selection clause applied to claim for
9 unfair or deceptive trade practices under Massachusetts consumer protection law where the forum
10 selection clause limited its applicability to “disputes under or relating to [the contract between the
11 parties]”); *see also Somerville Auto Transp. Serv., Inc. v. Auto. Finance Corp.*, 691 F. Supp. 2d
12 267, 271–72 (D. Mass. 2010) (“Courts generally construe the phrase ‘relating to’ broadly, likening
13 the phrase to ‘in connection with’ and ‘associated with,’ and ‘typically defined more broadly
14 and . . . not necessarily tied to the concept of a causal connection.’”).

15 This case is similar to *VMware*. Although this case involves a forum selection clause
16 rather than an arbitration clause, the Court finds that the *VMware* court’s reasoning is dispositive,
17 especially because the phrase “relating to” is interpreted broadly for both forum selection and
18 arbitration clauses. *See Kebb*, 59 F. Supp. 3d at 289 (interpreting “related to” in forum selection
19 clause broadly). The offer letter sets forth the relationship between the parties and the FEHA
20 claims for discriminatory termination, failure to accommodate, and failure to prevent
21 discrimination “at the very least, relate to the parties’ relationship” just as the wrongful
22 termination and retaliation claims related to the parties’ relationship in *VMware*. *See VMware*,
23 2016 WL 54120 at *6–7. Therefore, the Court finds that “arising out of or relating to” language
24 does not prevent the forum selection clause from applying to the instant suit.

25 Accordingly, because the forum selection clause applies and indicates that Defendant
26 consented to the exclusive jurisdiction of Santa Clara County Superior Court, the Court GRANTS
27 Plaintiff’s Motion to Remand.

28

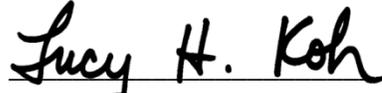
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's Motion to Remand. The Clerk shall transfer the instant suit to the California Superior Court for the County of Santa Clara.

IT IS SO ORDERED.

Dated: April 13, 2017



LUCY H. KOH
United States District Judge