

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  
SOUTHERN DISTRICT OF CALIFORNIA

ROY TUCK,  
  
Plaintiff,  
  
v.  
  
DIRECTV, a National satellite TV service  
provider, doing business in California,  
DOES 1 THROUGH 10, inclusively,  
  
Defendant.

Case No.: 16-CV-160 JLS KSC

**ORDER GRANTING DEFENDANT  
DIRECTV, LLC’S MOTION TO  
COMPEL ARBITRATION AND  
STAY PROCEEDINGS, AND  
DENYING AS MOOT  
DEFENDANT’S MOTION TO  
DISMISS**

(ECF No. 14)

Presently before the Court is Defendant DirecTV, LLC’s (“DirecTV”) Motion to Compel Arbitration and Stay Proceedings or in the Alternative to Dismiss Plaintiff’s Complaint. (“MTN,” ECF No. 14.) Plaintiff Roy Tuck filed a response in opposition to Defendant’s motion (“Opp’n,” ECF No. 21), and Defendant filed a reply in support of its motion (“Reply,” ECF No. 23). The Court vacated a hearing on the motion pursuant to Civil Local Rule 7.1(d)(1). (ECF No. 24.) After considering the parties’ arguments and the law, the Court **GRANTS** Defendant’s Motion to Compel Arbitration and **DENIES AS MOOT** Defendant’s Motion to Dismiss.

///  
///

## BACKGROUND

1  
2 On March 16, 2016, Plaintiff filed an amended complaint (“FAC”) against  
3 Defendant DirecTV alleging violations of the Telephone Consumer Protection Act  
4 (“TCPA”), the Federal Fair Debt Collection Practices Act (“FDCPA”), and the California  
5 Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”). (FAC, ECF No. 7.)  
6 Plaintiff’s claims arise from consumer debt collection calls attributed to Defendant for  
7 debts Plaintiff allegedly owes for DirecTV services. (FAC ¶ 33.) However, Plaintiff  
8 claims that he “has no prior or present established relationship with defendants [DirecTV]  
9 and Does 1-10 as it pertains to [any] negative consumer debt account, or any other alleged  
10 accounts in any amounts.” (*Id.* at ¶ 30 (emphasis removed).) Additionally, Plaintiff claims  
11 that he has no contractual obligation to Defendant “to pay them anything.” (*Id.* at ¶ 31  
12 (emphasis removed).)

13 On May 26, 2016, Defendant filed the instant Motion to Compel Arbitration and  
14 Stay Proceedings or in the Alternative to Dismiss Plaintiff’s Complaint. (ECF No. 14.)  
15 Defendant principally argues that Plaintiff’s allegations are covered by the terms of the  
16 arbitration provision in the DirecTV Customer Agreement (the “Agreement”), which  
17 Plaintiff accepted when he became a DirecTV customer.<sup>1</sup> (MTN 4, ECF No. 14-1.)  
18 According to Defendant, DirecTV provides the Agreement to customers for their review  
19 and acceptance at the time they accept service. (*Id.* at 4.) The Agreement is also available  
20 online on the DirecTV website. (*Id.*) Additionally, Defendant contends that Plaintiff was  
21 presented with an Equipment Lease Addendum at the time the equipment was installed at  
22 his home, which itself contained references to some of the key provisions of the  
23 Agreement, including the obligation to arbitrate disputes. (*Id.* at 5–6.)

24 Section 9 of the Agreement, entitled “**RESOLVING DISPUTES**,” contains the  
25 arbitration provision, which provides:

---

26  
27 <sup>1</sup> While Plaintiff argues that he has no contractual obligations to Defendant whatsoever, Defendant argues  
28 that Plaintiff became a DirecTV customer on January 31, 2008 when he ordered the DirecTV service.  
(MTN 5, ECF No. 14-1 (citing Declaration of Eva Kniley (“Kniley Decl.”) ¶ 4).)

1 In order to expedite and control the cost of disputes, you and we  
 2 agree that any legal or equitable claim relating to this Agreement,  
 3 any addendum, or your Service (referred to as a “Claim”) will be  
 resolved as follows:

4 . . .

[I]f we cannot resolve a Claim informally, any Claim either of us  
 5 asserts will be resolved only by binding arbitration. The  
 6 arbitration will be conducted under the rules of JAMS that are in  
 7 effect at the time the arbitration is initiated . . . and under the rules  
 set forth in this Agreement.

8 (Kniley Decl. Ex. A § 9.)

9 The arbitration provision additionally explains the meaning of the agreement to  
 10 arbitrate: “**ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A**  
 11 **JURY TRIAL.**” (Kniley Decl. Ex. A § 9 (emphasis in original).)

12 Plaintiff does not argue that his claims are not governed by the arbitration clause,  
 13 nor does Plaintiff argue that the Agreement—or the arbitration clause—is unenforceable.  
 14 Instead, Plaintiff claims that he has never had an arbitration agreement with Defendant,  
 15 and that Defendant “has fabricated documents and is intentionally trying to confuse and  
 16 mislead the Court.” (Opp’n 1, ECF No. 21.) Additionally, Plaintiff claims that he has  
 17 “never seen these alleged agreement excerpts before and was not provided with them at  
 18 any time when opening [an] account with” Defendant.<sup>2</sup> (*Id.* at 2 (emphasis in original).)

19 The Court now considers the parties’ arguments and the law.

## 20 EVIDENTIARY OBJECTIONS

21 “[O]n a motion to compel arbitration, a court ‘may consider the pleadings,  
 22 documents of uncontested validity, and affidavits submitted by either party.’” *Atlas Int’l*  
 23 *Mktg., LLC v. Car-E Diagnostics, Inc.*, No. 5:13-CV-02664-EJD, 2014 WL 3371842, at  
 24 \*3 (N.D. Cal. July 9, 2014) (citation omitted); *see also Xinhua Holdings Ltd. v. Elec.*

---

25  
 26 <sup>2</sup> This allegation directly conflicts with Plaintiff’s claim that he has never had a relationship with  
 27 Defendant. Plaintiff makes other similarly contradictory claims. For instance, in his FAC Plaintiff alleges  
 28 that the “same consumer business debt[s] allegedly owed to all of the [Defendants] *arose out of a*  
*transaction* that was primarily for personal, family, or household purposes.” (FAC ¶ 34 (emphasis  
 added).)

1 *Recyclers Int’l, Inc.*, No. 1:13-CV-1409 AWI SKO, 2013 WL 6844270, at \*5 (E.D. Cal.  
2 Dec. 26, 2013) (“For purposes of deciding a motion to compel arbitration, the Court may  
3 properly consider documents outside of the pleadings.”) (citation omitted); *Hotels Nev. v.*  
4 *L.A. Pac. Ctr., Inc.*, 144 Cal. App. 4th 754, 761 (2006) (“[W]hen a petition to compel  
5 arbitration is filed and accompanied by prima facie evidence of a written agreement to  
6 arbitrate the controversy, the court itself must determine whether the agreement exists and,  
7 if any defense to its enforcement is raised, whether it is enforceable.”).

8 With respect to evidence relied on by the Court in this order below, the Court  
9 **OVERRULES** Plaintiff’s objections. (ECF No. 21.) Specifically, the Court finds the  
10 service agreements attached to the declaration of Eva Kniley admissible for purposes of  
11 this Motion. (See Kniley Decl., Exs. A, E, ECF No. 14-2.)

#### 12 **LEGAL STANDARD**

13 The Federal Arbitration Act (FAA) governs the enforceability of arbitration  
14 agreements in contracts. See 9 U.S.C. § 1, *et seq.*; *Gilmer v. Interstate/Johnson Lane Corp.*,  
15 500 U.S. 20, 24–26 (1991). If a suit is proceeding in federal court, the party seeking  
16 arbitration may move the district court to compel the resisting party to submit to arbitration  
17 pursuant to their private agreement to arbitrate the dispute. 9 U.S.C. § 4. The FAA reflects  
18 both a “liberal federal policy favoring arbitration agreements” and the “fundamental  
19 principle that arbitration is a matter of contract.” *AT&T Mobility LLC v. Concepcion*, 563  
20 U.S. 333, 339 (2011) (quotations and citations omitted); *see also Kilgore v. Keybank, Nat’l*  
21 *Ass’n*, 718 F.3d 1052, 1057 (9th Cir. 2013) (en banc) (“The FAA was intended to overcome  
22 an anachronistic judicial hostility to agreements to arbitrate, which American courts had  
23 borrowed from English common law.”) (quoting *Mitsubishi Motors Corp. v. Soler*  
24 *Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 n.14 (1985)); *Circuit City Stores, Inc. v.*  
25 *Adams*, 279 F.3d 889, 892 (9th Cir. 2002) (“The [FAA] not only placed arbitration  
26 agreements on equal footing with other contracts, but established a federal policy in favor  
27 of arbitration, [citation], and a federal common law of arbitrability which preempts state  
28 law disfavoring arbitration.”).

1 In determining whether to compel a party to arbitration, the Court may not review  
2 the merits of the dispute; rather, the Court’s role under the FAA is limited to “determining  
3 (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement  
4 encompasses the dispute at issue.” *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119  
5 (9th Cir. 2008). If the Court finds that the answers to those questions are yes, the Court  
6 must compel arbitration. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

7 In determining the validity of an arbitration agreement, the Court applies state law  
8 contract principles. *Adams*, 279 F.3d at 892; *see also* 9 U.S.C. § 2. To be valid, an  
9 arbitration agreement must be in writing, but it need not be signed by the party to whom it  
10 applies as acceptance may be implied in fact. *Pinnacle Museum Tower Ass’n v. Pinnacle*  
11 *Mkt. Dev. (US), LLC*, 55 Cal. 4th 233, 236 (2012). Further, “[a]n arbitration clause within  
12 a contract may be binding on a party even if the party never actually read the clause.” *Id.*

### 13 ANALYSIS

14 For purposes of whether Plaintiff must, in fact, arbitrate these claims, the dispositive  
15 questions are (1) whether Plaintiff accepted the terms of the Agreement, (2) whether the  
16 arbitration clause in the DirecTV Customer Agreement covers this dispute and, if so, (3)  
17 whether that clause is otherwise enforceable.

#### 18 **I. Plaintiff Accepted the Terms of the Agreement**

19 The Court finds that Plaintiff accepted the terms of the Agreement, including the  
20 arbitration clause. As Defendant explains, Plaintiff accepted the terms of the Agreement  
21 by signing up for and continuing to receive DirecTV services, instead of rejecting the initial  
22 contract or immediately cancelling service. (MTN 6 (citing Kniley Decl. ¶¶ 12–13).)  
23 Additionally, Defendant provides a declaration and exhibits detailing the extent of  
24 Plaintiff’s relationship with Defendant as a customer for DirecTV services. (*See* MTN 5–  
25 6; *see also* Kniley Decl. Exs. B, C, D, F.) Thus, while Plaintiff argues he never saw the  
26 Agreement, “[i]t is a well-established principle of California contract law that ‘the law  
27 imputes to a person the intention corresponding to the reasonable meaning of his words  
28 and acts’ based on ‘his outward expression’ and not ‘his unexpressed intent.’” *Brown v.*

1 *DirecTV, LLC*, No. CV 12-08382 DMG EX, 2013 WL 3273811, at \*4 (C.D. Cal. June 26,  
2 2013) (quoting *Edwards v. Comstock Ins. Co.*, 205 Cal. App. 3d 1164, 1169 (1988)). Based  
3 on the evidence in the record, the Court is not convinced by Plaintiff’s unsubstantiated  
4 claim that he was never a DirecTV customer.<sup>3</sup> Accordingly, the Court finds that Plaintiff  
5 accepted the terms of the Agreement. *See, e.g., Brown*, 2013 WL 3273811, at \*4  
6 (confirming that DirecTV’s accept-or-return practice is a valid method of contract  
7 formation and thus compelling arbitration).

## 8 **II. The Arbitration Clause in the DirecTV Customer Agreement Covers Plaintiff’s** 9 **Claims**

10 The Court finds that the language of the arbitration clause contained in the  
11 Agreement encompasses Plaintiff’s claims. The arbitration clause extends to “any legal or  
12 equitable claim relating to this Agreement, any addendum, or [the customer’s] Service.”  
13 (Kniley Decl. Ex. A § 9.) Additionally, the Agreement specifically contemplates collection  
14 activities. (*See* Kniley Decl. Ex. A § 2(g) (“Collection Costs: To the extent permitted by  
15 law, you will pay us any costs and fees we reasonably incur to collect amounts you owe  
16 us.”) (emphasis in original).) Defendant argues that Plaintiff’s claims relate to and/or arise  
17 under the Agreement and his service. (MTN 11, ECF No. 14-1.) Specifically, Defendant  
18 argues that the collection calls were meant to recoup unpaid fees Plaintiff was obligated to  
19 pay for the DirecTV services Defendant provided. (*Id.*) Indeed, Plaintiff’s FAC alleges  
20 that his claims arise from consumer debt collection calls attributed to Defendant. (FAC  
21 ¶ 33 (“[Defendant] . . . called [Plaintiff’s] cell phone numbers . . . more than fifty five (55)  
22 times, many of these fifty five (55) harassing consumer debt collection calls were made in  
23 the same business day . . .” (emphasis in original).) Accordingly, the Court finds that  
24 Plaintiff’s claims relate to and/or arise under the Agreement and are thus governed by the  
25 arbitration clause in the Agreement. *Cf. McNamara v. Royal Bank of Scotland Grp.*, No.  
26 11-CV-2137-L WVG, 2012 WL 5392181, at \*7 (S.D. Cal. Nov. 5, 2012) (“Plaintiff’s  
27

---

28 <sup>3</sup> To the contrary, as discussed in footnote 2, Plaintiff seems to admit that he was a DirecTV customer.

1 TCPA claims relate to his Agreement with Defendants, and are consequently subject to  
2 arbitration.”); *see also Cayanan v. Citi Holdings, Inc.*, 928 F. Supp. 2d 1182, 1188 (S.D.  
3 Cal. 2013) (calls made to plaintiffs “because Plaintiffs had failed to make timely payments  
4 on their accounts,” “for the limited purpose of collecting money owed them,” were  
5 “‘related to’ the delinquent credit accounts” and thus TCPA claims based on those calls  
6 were governed by the arbitration clause).

### 7 **III. The Arbitration Clause in the DirecTV Customer Agreement Is Enforceable**

8 To make a case for unconscionability under California law, a party must show both  
9 procedural and substantive unconscionability. *See Armendariz v. Found. Health*  
10 *Pyschcare Servs., Inc.*, 24 Cal. 4th 83, 114 (2000). Courts use a sliding scale to analyze  
11 these two elements: “the more substantively oppressive the contract term, the less evidence  
12 of procedural unconscionability is required to come to the conclusion that the term is  
13 unenforceable, and vice versa.” *Id.*

#### 14 **A. Procedural Unconscionability**

15 Procedural unconscionability involves oppression or surprise flowing from “unequal  
16 bargaining power.” *Armendariz*, 24 Cal. 4th at 114. “Any contract of adhesion is  
17 minimally procedurally unconscionable, but absent other indicia of oppression or surprise,  
18 a contract of adhesion has only a low degree of procedural unconscionability.” *Brown*,  
19 2013 WL 3273811, at \*8 (citing *Ajamian v. CantorCO2e, LP*, 203 Cal. App. 4th 771, 795  
20 (2012)).

21 The Court finds that the arbitration agreement is only minimally procedurally  
22 unconscionable. DirecTV acknowledges that its contract of adhesion by definition carries  
23 with it at least some procedural unconscionability. (MTN 13, ECF No. 14-1.) But there  
24 appears to be no other evidence of procedural unconscionability. To the contrary, Plaintiff  
25 had at least two opportunities to review and reject the Agreement. Within 24 hours of  
26 ordering service over the phone, Defendant sent Plaintiff an email with a copy of the  
27 Agreement. (*Id.* at 5.) Additionally, Plaintiff was presented with an Equipment Lease  
28 Addendum at the time Defendant installed the DirecTV service equipment at his home,

1 and Defendant would not install the equipment unless a customer accepted the terms of the  
2 Equipment Lease Agreement (which references the arbitration clause). (*Id.* at 5–6.)  
3 Nevertheless, as explained below, the Court finds that any procedural unconscionability is  
4 outweighed by a lack of substantive unconscionability.

### 5 ***B. Substantive Unconscionability***

6 Substantive unconscionability exists when a contract has “overly harsh or one-sided  
7 results.” *Armendariz*, 24 Cal. 4th at 114 (citations and quotations omitted). The “ultimate  
8 issue in every case is whether the terms of the contract are sufficiently unfair, in view of  
9 all relevant circumstances, that a court should withhold enforcement.” *Sanchez v. Valencia*  
10 *Holding Co., LLC*, 61 Cal. 4th 899, 912 (2015). Further, “the standard for substantive  
11 unconscionability—the requisite degree of unfairness beyond merely a bad bargain—must  
12 be as rigorous and demanding for arbitration clauses as for any contract clause.” *Id.*

13 Plaintiff has not shown substantive unconscionability, so this Court lacks discretion  
14 to refuse to enforce the arbitration agreement on unconscionability grounds. *See*  
15 *Armendariz*, 24 Cal. 4th at 114. To the contrary, the arbitration clause contains many  
16 consumer-friendly provisions. For instance, DirecTV pledges to pay all arbitration costs  
17 beyond the \$125 filing fee. (Kniley Decl. Ex. A § 9(b).) Additionally, DirecTV agrees to  
18 hold the arbitration “at a location in your hometown area unless you and we both agree to  
19 another location or telephonic arbitration.” (*Id.*) Moreover, in arbitration, a putative  
20 plaintiff may “seek any and all remedies otherwise available to you pursuant to your state’s  
21 law.” (*Id.*) Indeed, other courts have enforced the same DirecTV arbitration provision at  
22 issue in this case. *See, e.g., Hodsdon v. DirecTV, LLC*, No. C 12-02827 JSW, 2012 WL  
23 5464615, at \*7 (N.D. Cal. Nov. 8, 2012) (“Because the Court finds DirecTV’s arbitration  
24 provision lacks any indicia of substantive unconscionability, it is enforceable.”).  
25 Consequently, because the Court finds that DirecTV’s arbitration clause in the Agreement  
26 lacks any indicia of substantive unconscionability, it is enforceable.

### 27 **IV. Motion to Dismiss**

28 In light of the Court’s conclusions that the arbitration clause in the Agreement covers



1 the claims alleged in this action and is enforceable, the Court does not reach Defendant's  
2 Motion to Dismiss.

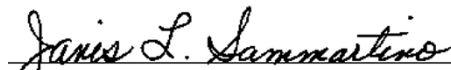
3 **CONCLUSION**

4 For the reasons stated above, the Court concludes that the arbitration clause  
5 contained in the Agreement (1) encompasses Plaintiff's claims related to the debt collection  
6 calls attributed to Defendant and (2) is enforceable. Accordingly, the Court hereby  
7 **GRANTS** Defendant's Motion to Compel Arbitration and **DENIES AS MOOT**  
8 Defendant's Motion to Dismiss. (ECF No. 14.)

9 Furthermore, pursuant to the FAA, the Court **STAYS** the judicial proceedings  
10 pending the outcome of any arbitration. *See* 9 U.S.C. § 3 ("If any suit or proceeding be  
11 brought in any of the courts of the United States upon any issue referable to arbitration  
12 under an agreement in writing for such arbitration, the court in which such suit is pending,  
13 upon being satisfied that the issue involved in such suit or proceeding is referable to  
14 arbitration under such an agreement, shall on application of one of the parties stay the trial  
15 of the action until such arbitration has been had in accordance with the terms of the  
16 agreement, providing the applicant for the stay is not in default in proceeding with such  
17 arbitration."); *Martin Marietta Aluminum, Inc. v. Gen. Elec. Co.*, 586 F.2d 143, 147 (9th  
18 Cir. 1978) (holding that courts shall order a stay of judicial proceedings "pending  
19 compliance with a contractual arbitration clause").

20 **IT IS SO ORDERED.**

21 Dated: November 15, 2016

22   
23 Hon. Janis L. Sammartino  
24 United States District Judge  
25  
26  
27  
28