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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY OLIVER,

Plaintiff,

v.

FIRST CENTURY BANK, N.A, and
STORED VALUE CARDS, INC. (d/b/a
NUMI FINANCIAL),

Defendant.

Case No.: 3:17-CV-00620-MMA-KSC

**ORDER DENYING PLAINTIFF’S
MOTION FOR
RECONSIDERATION**

[Doc. No. 20]

On November 16, 2017 the Court compelled arbitration of Plaintiff Anthony Oliver’s claims against Defendants First Century Bank and Stored Value Cards, Inc., and stayed the action. *See* Doc. No. 19. Plaintiff now moves the Court to reconsider its order compelling arbitration, arguing that the Court committed clear error. *See* Doc. No. 20. Defendants filed an opposition to the motion, to which Plaintiff replied. *See* Doc. Nos. 21, 22. For the reasons set forth below, the Court **DENIES** Plaintiff’s motion for reconsideration.

1 LEGAL STANDARD

2 Pursuant to Federal Rule of Civil Procedure 59(e), district courts have the power to
3 reconsider a previous ruling or entry of judgment. Fed. R. Civ. P. 59(e). A Rule 59(e)
4 motion seeks “a substantive change of mind by the court.” *Tripati v. Henman*, 845 F.2d
5 205, 205 (9th Cir. 1988). Rule 59(e) provides an extraordinary remedy and, in the
6 interest of finality and conservation of judicial resources, such a motion should not be
7 granted absent highly unusual circumstances. *Carroll v. Nakatani*, 342 F.3d 934, 945
8 (9th Cir. 2003); *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). Rule 59
9 may not be used to re-litigate old matters, raise new arguments, or present evidence that
10 could have been raised prior to entry of the judgment. *Exxon Shipping Co. v. Baker*, 544
11 U.S. 471, 486–87 (2008).

12 Under Rule 59(e), it is appropriate to alter or amend a previous ruling or judgment
13 if “(1) the district court is presented with newly discovered evidence, (2) the district court
14 committed clear error or made an initial decision that was manifestly unjust, or (3) there
15 is an intervening change in controlling law.” *United Nat. Ins. Co. v. Spectrum*
16 *Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009). To carry the burden of proof, a
17 moving party seeking reconsideration must show more than a disagreement with the
18 Court’s decision or a recapitulation of the cases and arguments previously considered by
19 the court. *See United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D.
20 Cal. 2001).

21 DISCUSSION

22 As set forth in its previous order, the Court compelled arbitration of Plaintiff’s
23 claims based on a delegation clause contained in the cardholder agreement, which
24 accompanied two pre-paid debit cards issued to Plaintiff upon his release from jail.
25 Plaintiff failed to contest specifically the delegation clause’s validity in his opposition to
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1 Defendant’s motion to compel arbitration. Doc. No. 19 at 4.¹ As such, the Court
2 determined the delegation clause was enforceable.² Plaintiff disputes that determination.
3 Plaintiff argues that because he never received copies of the cardholder agreements at
4 issue, and thus contested the validity of the arbitration provision in the agreements, he
5 also implicitly challenged the enforceability of the delegation clause. Plaintiff further
6 contends that he did not bear the burden of raising an affirmative challenge to the
7 delegation clause.

8 Plaintiff previously opposed arbitration on the grounds that he never received the
9 cardholder agreements containing the arbitration provision. Plaintiff now asks the Court
10 to use the benefit of hindsight to infer a specific challenge to the delegation clause
11 contained in those agreements based solely on his objection to the validity of the
12 arbitration provision. *See* Doc. No. 20-1 at 4, 6. Defendants respond that such a general
13 challenge does not meet the level of specificity required to defeat a motion to compel
14 arbitration. *See* Doc. No. 21 at 3.

15 If a party does not challenge a delegation clause “specifically,” the Court “must
16 treat it as valid under § 2 [of the Federal Arbitration Act], and must enforce it under §§ 3
17 and 4, leaving any challenge to the validity of the Agreement as a whole for the
18 arbitrator.” *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 72 (2010); *see also Garcia*
19 *v. Dell, Inc.*, 905 F. Supp. 2d 1174, 1178–79 (S.D. Cal. 2012) (holding that the delegation
20 clause should be enforced because the party did not specifically challenge the clause).

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23 ¹ Citations refer to the pagination assigned by the CM/ECF system.

24 ² As the Court noted in its previous Order, a party moving to compel arbitration must show “(1) the
25 existence of a valid, written agreement to arbitrate; and, if it exists, (2) that the agreement to arbitrate
26 encompasses the dispute at issue.” *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th
27 Cir. 2015) (citation omitted). “However, these gateway issues can be expressly delegated to the
28 arbitrator where ‘the parties clearly and unmistakably provide otherwise.’” *Brennan v. Opus Bank*, 796
F.3d 1125, 1130 (9th Cir. 2015) (citing *AT&T Technologies, Inc. v. Communications Workers of*
America, 475 U.S. 643, 649 (1986)); *see also Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 78 (2010)
 (“‘[Q]uestion[s] of arbitrability’ thus include questions regarding the existence of a legally binding and
valid arbitration agreement”). Doc. No. 19 at 3.

1 Here, Plaintiff continues to bring general grievances against the arbitration
2 provision contained in the cardholder agreements. Plaintiff relies on a recent decision by
3 this Court in *Anderson v. Credit One Bank* to argue that the Court erred in this case.
4 However, Plaintiff appears to conflate the parties' arguments and the court's findings. In
5 *Anderson*, the defendant sought to compel arbitration, arguing that the plaintiff agreed to
6 defendant's arbitration agreement and the existence of such agreement was delegated to
7 an arbitrator to decide. *Anderson v. Credit One Bank, Nat'l Ass'n*, No. 16CV3125-MMA
8 (AGS), 2017 WL 2258064, at *1, *2 (S.D. Cal. May 23, 2017). The plaintiff opposed the
9 motion, arguing that he never entered into an arbitration agreement. *Id.* The court found
10 that "[d]efendant's arbitration policy contains no similar provision delegating authority
11 solely to an arbitrator," and thus it was left to the court to decide whether a valid contract
12 to arbitrate existed. *Id.* at *3. Here, the Court found that the cardholder agreements
13 contain an enforceable delegation clause, *see* Doc. No. 19 at 3, 4, which makes this case
14 distinguishable from *Anderson*, and similar to *Fischer v. Rent-A-Center, Inc.* In *Fischer*,
15 the court found a delegation clause and enforced it when the plaintiff did not contest its
16 validity or dispute specific terms of the arbitration agreement. *Fischer v. Rent-A-Ctr.,*
17 *Inc.*, No. 2:14-CV-00918-MCE-AC, 2014 WL 3729553, at *4 (E.D. Cal. July 24, 2014).

18 More importantly, Plaintiff fails to demonstrate that he specifically contested the
19 validity of the delegation clause. Plaintiff claims that he contested the delegation
20 provision "when he argued that he never received the Cardholder Agreement at all, which
21 necessarily included the delegation clause itself." Doc. No 20-1 at 6. Plaintiff's
22 argument is foreclosed by the Supreme Court's holding in *Rent-A-Center*. 561 U.S. at
23 72. Pursuant to *Rent-A-Center*, Plaintiff's argument that a challenge to the whole of the
24 agreement necessarily includes a specific challenge to the delegation clause, necessarily
25 fails.

26 Plaintiff further contends that Defendants carried the burden to invoke the
27 delegation clause in support of the motion to compel arbitration, which Defendants did
28 not do. Defendants respond that they did address the delegation clause in their motion to

1 compel arbitration and, moreover, that Plaintiff bore the burden to challenge the
2 delegation clause.

3 There appears to be a disagreement among the district courts as to which party
4 bears the burden of addressing a delegation clause in an arbitration agreement. In
5 *McLellan v. Fitbit, Inc.*, the court held that an arbitrator would decide arbitrability after
6 examining whether the party opposing arbitration raised specific objections, and finding
7 that the party opposing arbitration raised “challenges to the validity of the agreement to
8 arbitrate, but none specifically to the delegation clause.” *McLellan*, 2017 WL 4551484,
9 at *4; *see also Fischer*, 2014 WL 3729553, at *4 (holding that the decision of whether a
10 valid arbitration agreement exists “is a gateway issue for the arbitrator[]” because
11 Plaintiff did not dispute the validity of the delegation clause or the “specific terms of the
12 arbitration agreement”). In *Wilson v. HSBC Bank USA*, the court held that it would
13 decide arbitrability when the parties seeking to compel arbitration did not address the
14 delegation clause until their reply brief and it was their “burden to invoke the delegation
15 clause at the outset.” *Wilson v. HSBC Bank USA*, No. CV 13-1111 ABC (JCX), 2013
16 WL 12114443, at *2 (C.D. Cal. May 31, 2013). However, the *Wilson* court did not
17 provide any authority for its proposition, *see id.*, which also appears to run counter to the
18 Supreme Court’s holding in *Rent-A-Center*, 561 U.S. at 72–73.

19 In *Rent-A-Center*, the court focused exclusively upon whether the party opposing
20 arbitration “challenged the delegation clause specifically.” *See id.* at 72. The Court held
21 that “[the party] challenged only the validity of the contract as a whole,” and that
22 “nowhere in his opposition to Rent-A-Center’s motion to compel arbitration did he even
23 mention the delegation provision.” *Id.* The Court further emphasized that none of the
24 party’s substantive unconscionability challenges were specific to the delegation clause,
25 and merely focused on the invalidity of the entire agreement. *Id.* at 73–74 (emphasizing
26 the challenger’s arguments at the district court, Ninth Circuit, and Supreme Court). *Rent-*
27 *A-Center* clearly holds that the party seeking to avoid arbitration bears the burden of
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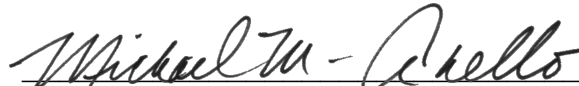
1 raising specific arbitrability challenges, including a challenge to the enforceability of a
2 delegation clause.

3 **CONCLUSION**

4 Having reviewed its previous ruling, the Court is satisfied that it committed no
5 error in compelling the parties to arbitrate Plaintiff's claims. Accordingly, the Court
6 **DENIES** Plaintiff's motion for reconsideration.

7 **IT IS SO ORDERED.**

8 DATE: March 22, 2018



9 HON. MICHAEL M. ANELLO
10 United States District Judge
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