EXHIBIT A

To Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CINDY STREIT, ET AL.,

Plaintiffs,

v. CV 07-J-1918-S

TWENTIETH CENTURY FOX
FILM CORPORATION, ET AL.,

Defendants.

ORDER

Pending before the court is the plaintiffs' Motion for Relief from Order (doc. 31). In their motion, the plaintiffs request the court to vacate its Order of January 24, 2008, transferring this case to the Southern District of New York (doc. 29). Having considered the motion and being of the opinion that it is due to be denied for the reasons that follow, it is hereby **ORDERED** that the plaintiffs' motion is **DENIED**.

The plaintiffs contend that they have presented enough evidence of fraud relating to the inclusion of the forum selection clause to, at a minimum, create a jury issue. Plaintiff's motion at 5. In support of this argument, the plaintiffs cite *Blue Cross and Blue Shield of Alabama v. Woodruff*, 803 So.2d 519 (Ala. 2001),

for its holding that fraud in the inducement of an arbitration clause "would be determined by a jury." Plaintiff's motion at 5. Despite the plaintiffs' best efforts to the contrary, *Woodruff* provides no support for their argument. In *Woodruff*, the defendant filed a motion to compel arbitration pursuant to an arbitration clause in the plaintiff's insurance policy. *Id.* at 520-21. The plaintiff advanced "numerous 'defenses' and arguments" including fraud in the inducement as to why the case should not be submitted to arbitration. *Id.* at 523. However, the critical issue was "whether Blue Cross complied with the procedures specified in its contract for amending that contract." *Id.* at 527. The Alabama Supreme Court held that "the evidence before the trial judge was insufficient to establish that Blue Cross effectively amended the 1991 contract to add the arbitration provision." *Id.* at 528. The Court never considered nor discussed the plaintiff's allegation of fraud in the inducement.

As this court stated in its Order of January 24, 2008, the law of the Eleventh Circuit Court of Appeals is that an allegation of fraud renders a forum selection clause unenforceable solely when "the inclusion of that clause in the contract was the product of fraud or coercion." *Lipcon v. Underwriters at Lloyd's, London,* 148 F.3d 1285, 1296 (11th Cir. 1998) (citing *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n. 14 (1974)); *see also Ex parte Leasecomm Communication,* 879 So. 2d

1156, 1159 (Ala. 2003) ("the proper inquiry is whether the forum-selection clause is the result of fraud in the inducement in the negotiation or inclusion in the agreement of the forum-selection clause itself . . . if the claim of fraud in the inducement is directed toward the entire contract, the fraud exception to enforcement of the forum-selection clause does not apply"). In *Scherk*, the Court specifically stated that this "does not mean that any time a dispute arising out of a transaction is based upon an allegation of fraud, as in this case, the clause is unenforceable." *Scherk*, 417 U.S. at 519 n. 14.

The fraud that the plaintiffs have asserted is that they did not thoroughly read the Standard Consent Agreement because the defendants did not allow them enough time and that they were misled by the use of the term "Standard" in the title of the contract. Plaintiff's motion at 2-5. Under Alabama law, "a person who signs a contract is on notice of the terms therein and is bound thereby even if he or she fails to read the document." *Locklear Dodge City, Inc. v. Kimbrell*, 703 So.2d 303, 306 (Ala. 1997). Had the plaintiffs read the Standard Consent Agreement, it would have been apparent from the clear and unambiguous language in the forum selection clause that all claims must be brought in the State and County of New York.

The plaintiffs' argument that they were rushed into signing the Standard

Consent Agreement also does not render the forum selection clause unenforceable. In *Ex parte Perry*, 744 So.2d 859 (Ala. 1999), the Alabama Supreme Court was faced with a similar set of facts in which the plaintiff argued that an arbitration provision should not be enforced because the defendant automobile dealer "hurried her through the purchase of her new Hyundai automobile and did not give her an opportunity to read the purchase-agreement form before she signed it." *Id.* at 862. The Court noted that a party is responsible for reading a contract before signing it, regardless of whether the party felt "hurried." *Id.* at 863 (noting that if the plaintiff felt hurried "she could have slowed the process down or could have refused to sign the contract until she had had time to read it in its entirety").

In regard to the use of the term "Standard" in the title of the contract, the court is of the opinion that the term "Standard" is not so misleading as to render the forum selection clause unenforceable.

The plaintiffs' final argument is that the court failed to address plaintiff McKinnon and plaintiff Moseley's health problems in its Order of January 24, 2008. The Eleventh Circuit has held that a forum selection clause will rarely "be outweighed by other 1404(a) factors." *In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989). While the plaintiffs' health is a factor to be considered under 1404(a) which weighs in favor of the plaintiffs, it is not enough to overcome the

presumption in favor of enforcing the valid forum selection clause.

Conclusion

For the above reasons, the plaintiffs' Motion for Relief from Order is hereby **DENIED**.

DONE and **ORDERED** this the 30th day of January 2008.

INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE