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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SEAN POWELL,

11 Plaintiff,

12 v.

13 UNITED RENTALS (NORTH
14 AMERICA), INC.,

15 Defendant.

CASE NO. C17-1573JLR

ORDER SCHEDULING ORAL
ARGUMENT

16 The court hereby SCHEDULES oral argument on Defendant United Rentals
17 (North America), Inc.'s ("United Rentals") motion to compel arbitration for Wednesday,
18 March 6, 2019, at 11:00 a.m. (Mot. (Dkt. # 62).) The court DIRECTS the parties to
19 come prepared to discuss the following issues:

20 Is United Rentals' motion to compel arbitration properly before this court? The
21 arbitration agreement at issue ("the Agreement") vests the courts of Fairfield County,
22 Connecticut and the District of Connecticut with "exclusive jurisdiction" to determine

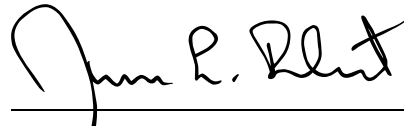
1 matters concerning “[t]he interpretation and enforcement of the terms” of the Agreement.
2 (Marzulla Decl. (Dkt. # 64) ¶ 4, Ex. A (“Agreement”) § D.) Plaintiff Sean Powell argues
3 that, in light of this clause, only a state or federal court in Connecticut may determine the
4 threshold issues of arbitrability the parties have put before this court. (Resp. (Dkt. # 66)
5 at 1, 5-6.) United Rentals disputes that argument on the ground that private parties
6 cannot deprive a court of subject matter jurisdiction over a controversy by means of a
7 choice-of-venue or forum selection clause. (Reply (Dkt. # 68) at 2.) The court is
8 satisfied that it has subject matter jurisdiction over the underlying action and statutory
9 authority under the Federal Arbitration Agreement (“FAA”), 9 U.S.C. § 1, *et seq.*, to
10 entertain United Rentals’ motion to compel arbitration. *See* 9 U.S.C. §§ 3, 4. However,
11 the court seeks argument from the parties as to: (1) the interaction, if any, between the
12 clause in the Agreement that vests courts in Connecticut with exclusive jurisdiction to
13 interpret and enforce the Agreement, on the one hand, and the Agreement’s alleged
14 incorporation of the rules of the American Arbitration Association, which delegate
15 threshold issues of arbitrability to an arbitrator, on the other (*see* Agreement § D;
16 Simpson Decl. (Dkt. # 63) ¶ 5, Ex. B at 17); (2) whether the clause that vests courts in
17 Connecticut with exclusive jurisdiction to interpret and enforce the Agreement should be
18 treated as a forum selection clause; and (3) whether the parties have functionally “waived
19 any benefit” of that clause, as United Rentals suggests (*see* Reply at 3).

20 In addition, the court DIRECTS the parties to consider whether the following is
21 relevant to the court’s adjudication of United Rentals’ motion to compel arbitration:

22 Under the FAA, 9 U.S.C. § 4, a district court may order arbitration only within the

1 district in which the petition to compel arbitration was filed. *See, e.g., Lexington Ins. Co.*
2 *v. Centex Homes*, 795 F. Supp. 2d 1084, 1091 (D. Haw. 2011) (citing *Cont'l Grain Co. v.*
3 *Dant & Russell, Inc.* 118 F.2d 967, 968-69 (9th Cir. 1941)); *see also Merrill Lynch,*
4 *Pierce, Fenner & Smith, Inc. v. Lauer*, 49 F.3d 323, 327 (7th Cir. 1995) (noting that “the
5 mandatory language [of 9 U.S.C. § 4] ties the location of arbitration to the district in
6 which the motion to compel is brought”). Accordingly, under the FAA, the District of
7 Connecticut could not compel arbitration according to the terms set forth in the
8 Agreement, *i.e.*, that arbitration occur within 50 miles of the place where Mr. Powell last
9 worked for United Rentals. (*See* Agreement § D); 9 U.S.C. § 4. Because the parties have
10 not briefed this issue, the court asks the parties to come prepared to discuss its relevance,
11 if any, to the court’s decision on United Rentals’ motion to compel arbitration.

12 Dated this 1st day of March, 2019.

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15 The Honorable James L. Robart
16 U.S. District Court Judge
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