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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 ON DEFENDANT'S  
MOTION TO COMPEL  
ARBITRATION

16 **I. INTRODUCTION**

17 Before the court is Defendant United Rentals (North America), Inc.'s ("United  
18 Rentals") motion to compel arbitration. (Mot. (Dkt. # 62).) Plaintiff Sean Powell  
19 opposes the motion. (Resp. (Dkt. # 66).) United Rentals filed a reply. (Reply (Dkt.  
20 # 68).) The court heard oral argument on March 6, 2019 (*see* 3/1/19 Order (Dkt. # 69);  
21 Min. Entry (Dkt. # 70)), and the parties subsequently submitted supplemental briefing  
22 (Pl. Supp. Br. (Dkt. # 71); Def. Supp. Br. (Dkt. # 72); Def. 2d Supp. Br. (Dkt. # 75).)

1 The court has considered the motion, the parties’ submissions concerning the motion, the  
2 relevant portions of the record, and the applicable law. Being fully advised, the court  
3 **DECLINES** to rule on United Rentals’ motion to compel arbitration and **TRANSFERS**  
4 this action to the United States District Court for the District of Connecticut.

## 5 **II. BACKGROUND**

### 6 **A. Procedural Background**

7 Former plaintiff Ricardo Castillo filed this putative class and collective action on  
8 October 23, 2017, alleging claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201,  
9 *et seq.* (“FLSA”) and Washington state law. (*See* Compl. (Dkt. # 1).) On June 19, 2018,  
10 Mr. Castillo filed a motion for leave to file a second amended complaint and withdraw as  
11 named plaintiff because, “for personal reasons,” he could no longer act as a named  
12 plaintiff. (Castillo Decl. (Dkt. # 44-4) ¶ 4.) The court granted Mr. Castillo’s motion.  
13 (Order (Dkt. # 52).) Mr. Powell was then substituted as a named plaintiff and filed  
14 second and third amended complaints. (*See* SAC (Dkt. # 53); TAC (Dkt. # 56).)

### 15 **B. Factual Background**

16 United Rentals, an equipment rental company, is headquartered in Connecticut and  
17 incorporated in Delaware. (TAC ¶ 17; *see also* Mot. at 2.) Mr. Powell is a Washington  
18 State resident who worked as a delivery driver for United Rentals from May 11, 2015, to  
19 October 16, 2017, at United Rentals’ branches in Seattle, Washington and Woodinville,  
20 Washington. (Murphy Decl. (Dkt. # 65) ¶ 3; *see also* Powell Decl. (Dkt. # 66-1) ¶ 4.)  
21 The court outlines United Rentals’ application process before describing the arbitration  
22 agreement at issue.

1           1. Application Process

2           Mr. Powell applied to work at United Rentals through the company’s online  
3 application process. (Powell Decl. ¶ 5.) According to United Rentals, at the time Mr.  
4 Powell submitted his application, any online applicant would have been required to  
5 register for a unique user identification and password. (Mot. at 3; *see also* Marzulla Decl.  
6 (Dkt. # 64) ¶ 5.) Once an applicant created a user ID and password, the applicant would  
7 be prompted to “consent to submit all related forms, documents, and information  
8 electronically” by way of the applicant’s electronic signature. (Marzulla Decl. ¶ 6.) Mr.  
9 Powell could not have submitted an online application without consenting to use of his  
10 electronic signature. (*Id.* ¶ 7.)

11           Mr. Powell’s electronic application materials included a one-and-a-half page  
12 agreement concerning the arbitration of employment-related claims (“the Agreement”).  
13 (*Id.* ¶ 4, Ex. A (“Agreement”).) The employment application software United Rentals  
14 used at the time Mr. Powell submitted his application displayed the Agreement “as a  
15 standalone document on its own screen.” (Marzulla Decl. ¶ 10.) At the top of that page  
16 was the following message:

17           **PLEASE REVIEW THIS SCREEN CAREFULLY BECAUSE IT**  
18           **CONTAINS BINDING CONTRACTUAL TERMS THAT AFFECT**  
19           **YOUR LEGAL RIGHTS. BY SELECTING THE “I ACCEPT”**  
              **BUTTON BELOW YOU ARE AGREEING TO BE BOUND TO ALL**  
              **OF THE TERMS CONTAINED ON THIS SCREEN.**

20 (Agreement.) To proceed with the application process, Mr. Powell would have had to  
21 click “Agree” on the page that displayed the Agreement. (*Id.* at 10.)

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1 At the end of the electronic application, Mr. Powell was prompted to enter his  
2 electronic signature. (*Id.* ¶ 11.) His signature, as well as a timestamp, was then affixed to  
3 each section of his application materials, including the Agreement. (*Id.*) Mr. Powell  
4 does not recall submitting his electronic signature to complete his job application, and he  
5 does not recall executing the Agreement. (Powell Decl. ¶¶ 8-9.) However, United  
6 Rentals’ records show that Mr. Powell electronically signed and submitted his application  
7 materials, and that his electronic signature was affixed to the Agreement, on April 24,  
8 2015, at 3:43 p.m. EST. (Marzulla Decl. ¶ 11.)

9 2. The Agreement

10 The Agreement provides that it “is governed by the Federal Arbitration Act, to the  
11 maximum extent permitted by applicable law.” (Agreement § A.) It requires that United  
12 Rentals and the applicant-employee “arbitrate any and all disputes, claims, or  
13 controversies . . . against the other that could be brought in a court,” including claims  
14 under the FLSA and related state and local laws. (*Id.*) The Agreement also includes an  
15 express waiver of class, collective, and multi-party actions. (*Id.* § C.) Further, the  
16 Agreement provides that arbitration will occur “at a mutually convenient time and place  
17 within 50 miles of the location where [the applicant-employee] last worked . . . for  
18 [United Rentals], or such other location as the parties mutually agree.” (*Id.* § D.)  
19 Finally, the Agreement includes a clause that vests the District of Connecticut or the state  
20 court in Fairfield County, Connecticut with “exclusive jurisdiction” to “interpret[] and  
21 enforce[] the terms” of the Agreement. (*Id.*) Specifically, the Agreement provides:

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1 The interpretation and enforcement of the terms contained herein, and, if  
2 necessary, any request to enforce the decision of the arbitrator, shall be  
3 resolved and determined exclusively by the state court sitting in Fairfield  
4 County, Connecticut or the federal courts in the District of Connecticut and  
5 you hereby consent that such courts be granted exclusive jurisdiction for such  
6 purpose.

7 (*Id.*)

### 8 **C. United Rentals’ Motion to Compel Arbitration**

9 United Rentals moves the court to “enforce” the Agreement by compelling Mr.  
10 Powell to arbitrate his claims. (Mot. at 1.) In addition, United Rentals moves to dismiss  
11 Mr. Powell’s individual claims and the putative class and collective claims as barred by  
12 the Agreement. (*Id.* at 12.) Mr. Powell opposes United Rentals’ motion on multiple  
13 grounds. As a threshold matter, Mr. Powell argues that, “as a matter of contract, this  
14 court is prohibited from hearing” United Rentals’ motion because the Agreement  
15 expressly provides that only a court in Connecticut may enforce the terms of the  
16 Agreement. (Resp. at 5.) In the alternative, Mr. Powell asserts that this court, not an  
17 arbitrator, must determine questions of arbitrability. (*Id.* at 6-7.) Finally, Mr. Powell  
18 contends that the Agreement is unenforceable because it is procedurally and substantively  
19 unconscionable under Washington law. (*Id.* at 9-12.)

20 The court now considers the motion.

## 21 **III. ANALYSIS**

### 22 **A. Legal Standard**

The Federal Arbitration Act (“FAA”) governs arbitration agreements in any  
contract affecting interstate commerce. *See Circuit City Stores, Inc. v. Adams*, 532 U.S.

1 105, 119 (2001); 9 U.S.C. § 2. Under the FAA, arbitration agreements “shall be valid,  
2 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the  
3 revocation of any contract.” 9 U.S.C. § 2. The FAA “reflect[s] both a liberal policy  
4 favoring arbitration . . . and the fundamental principle that arbitration is a matter of  
5 contract.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (internal  
6 quotation marks and citations omitted). “In line with these principles, courts must place  
7 arbitration agreements on an equal footing with other contracts . . . and must enforce  
8 them according to their terms.” *Id.* (internal quotation marks and citations omitted).

9 Under the FAA, “[a] party aggrieved by the alleged failure, neglect, or refusal of  
10 another to arbitrate under a written agreement for arbitration may petition any United  
11 States district court which, save for such agreement, would have jurisdiction . . . of the  
12 subject matter of a suit arising out of the controversy between the parties,” for an order  
13 compelling arbitration. 9 U.S.C. § 4. On a motion to compel arbitration, the court’s role  
14 under the FAA is generally “limited to determining (1) whether a valid agreement to  
15 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at  
16 issue.” *Chiron Corp. v. Ortho Diagnostic Sys.*, 207 F.3d 1126, 1130 (9th Cir. 2000).

#### 17 **B. Existence of the Agreement**

18 At the outset, the court notes that, although Mr. Powell argues that the Agreement  
19 is “unenforceable” on unconscionability grounds, he does not contest the making or  
20 existence of the Agreement. (*See Resp. at 1.*) Moreover, although Mr. Powell attests that  
21 he does not recall executing the Agreement, he does not dispute United Rentals’ evidence  
22 showing that he was presented with a copy of the Agreement during the online

1 application process and that he electronically signed the Agreement on April 24, 2015.  
2 (See Powell Decl. ¶¶ 8-9; see also Agreement.) Accordingly, the court finds that there is  
3 no genuine dispute that Mr. Powell and United Rentals entered into the Agreement. See  
4 *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., Inc.*, 925 F.2d 1136, 1141 (9th Cir.  
5 1991) (“Only when there is no genuine issue of fact concerning the formation of the  
6 [arbitration] agreement should the court decide as a matter of law that the parties did or  
7 did not enter into such an agreement.”) (quoting *Par-Knit Mills, Inc. v. Stockbridge*  
8 *Fabrics Co.*, 636 F.2d 51, 54 (3d Cir. 1980)).

### 9 **C. Forum**

10 As a threshold matter, Mr. Powell argues that, “[a]s a matter of contract,” the court  
11 cannot adjudicate United Rentals’ motion to compel arbitration because the Agreement’s  
12 “the express terms . . . clearly state that only a state or federal court in the State of  
13 Connecticut may interpret or enforce [it].” (Resp. at 1; see also *id.* at 5-6.) Mr. Powell  
14 appears to argue that, given this clause, United Rentals must seek a decision on  
15 arbitrability in a state or federal court in Connecticut. (See *id.* at 6 (arguing that, “if  
16 [United Rentals] wishes to enforce the terms of its arbitration agreement, it may only do  
17 so in a Connecticut court”).) The court agrees.

18 To begin, the court finds that the clause concerning Connecticut courts functions  
19 as a forum selection clause for issues of arbitrability: it confines disputes on “[t]he  
20 interpretation and enforcement” of the Agreement to the state court sitting in Fairfield  
21 County, Connecticut and the United States District Court for the District of Connecticut.  
22 (See Agreement § D); *SBKC Serv. Corp. v. 1111 Prospect Partners, L.P.*, 105 F.3d 578,

1 582 (10th Cir. 1997) (noting that forum selection clauses “clearly confine litigation to  
2 specific tribunals”); *see also Integrated Health Res., LLC v. Rossi Psychological Grp.,*  
3 *P.A.*, 537 F. Supp. 2d 672, 675 (D.N.J. 2008) (“Even contractual provisions which  
4 specify only that the parties agree to submit to a particular ‘jurisdiction’ . . . are routinely  
5 recognized as unambiguously creating a forum selection clause.”). Federal law governs  
6 the enforcement of forum selection clauses. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858  
7 F.2d 509, 513 (9th Cir. 1988). Under federal law, forum selection clauses are  
8 “presumptively valid” and “should be honored ‘absent some compelling or countervailing  
9 reason.’” *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (quoting  
10 *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)).

11 Here, neither party challenges the validity of the forum selection clause. Mr.  
12 Powell argues that Agreement’s arbitration provisions are not enforceable, but he does  
13 not contend that the forum selection clause itself is invalid for reasons of fraud,  
14 overreaching, or injustice. (*See generally* Resp.; Pl. Supp. Br.) To the contrary, Mr.  
15 Powell vigorously asserts that the court must honor the forum selection clause and  
16 decline to entertain United Rentals’ motion to compel arbitration. (Resp. at 5-6.) United  
17 Rentals, for its part, suggests that the court should compel the parties to arbitration  
18 notwithstanding the forum selection clause but does not dispute the clause’s validity.  
19 (*See* Reply at 2-3; Def. Supp. Br. at 1-2.) Because neither party has challenged the forum  
20 selection clause’s presumed validity, the court finds the clause valid and enforceable.

21 The court further concludes that the forum selection clause is mandatory, as  
22 opposed to permissive. “A permissive clause allows suit to be brought in a particular



1 forum, but does not preclude litigation elsewhere”; in contrast, “[a] mandatory clause . . .  
2 ‘clearly require[s] exclusive jurisdiction.’” *Tech. Credit Corp. v. N.J. Christian Acad.*,  
3 307 F. Supp. 3d 993, 1007 (N.D. Cal. 2018) (quoting *Hunt Wesson Foods, Inc. v.*  
4 *Supreme Oil Co.*, 817 F.2d 75, 77 (9th Cir. 1987)) (emphasis omitted). The plain  
5 language of the Agreement demonstrates that the parties intended to designate the state  
6 court sitting in Fairfield County, Connecticut and the United States District Court for the  
7 District of Connecticut as the “exclusive” forums for disputes concerning the  
8 interpretation and enforcement of the Agreement, not just acceptable ones. (*See*  
9 Agreement § D.)

10 Finally, the court finds that United Rentals’ efforts to compel Mr. Powell to  
11 arbitrate his claims fall within the scope of the Connecticut forum selection clause. The  
12 scope of the clause hinges upon the phrase “interpretation and enforcement.” (*See*  
13 Agreement § D.) “Interpretation” is “[t]he determination of how a text most fittingly  
14 applies to particular facts.” Black’s Law Dictionary (10th ed. 2014). “Enforcement,”  
15 meanwhile, is an “act or process of compelling compliance with a[n] . . . agreement.” *Id.*  
16 To adjudicate a motion to compel arbitration, a court must interpret the Agreement: it  
17 must ask whether, under the facts of the case and the terms of the Agreement, the parties  
18 agreed to arbitrate arbitrability, or, if not, whether the Agreement is valid and  
19 encompasses the dispute at issue. *See, e.g., Chiron Corp.*, 207 F.3d at 1130. Moreover,  
20 should a court find that arbitration is warranted, it must proceed to enforce, or compel  
21 compliance with, the Agreement. In other words, a judicial decision to compel

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1 arbitration plainly requires “[t]he interpretation and enforcement” of the Agreement,  
2 matters committed exclusively to courts in Connecticut. (*See* Agreement § D.)

3 1. United Rentals’ Arguments

4 United Rentals asserts three reasons why the court should entertain Mr. Powell’s  
5 motion to compel arbitration notwithstanding the forum selection clause. (Reply at 2-3;  
6 *see also* Agreement § D.) First, United Rentals contends that private parties cannot  
7 deprive a court of subject matter jurisdiction by means of a forum selection clause. (*Id.* at  
8 2.) Second, United Rentals maintains that the parties have functionally “waived” their  
9 ability to invoke the forum selection clause. (*Id.* at 3.) Specifically, United Rentals  
10 asserts that Mr. Powell “has waived any benefit of the forum selection clause by not  
11 seeking to transfer venue under 28 U.S.C. § 1404(a),” and that United Rentals has chosen  
12 not to “enforce” the clause “for the convenience of the parties.” (*Id.*) Finally, United  
13 Rentals argues that, if the court declines to rule upon its motion, it will frustrate the  
14 FAA’s purpose of moving arbitrable disputes into arbitration “as quickly and easily as  
15 possible.” (Def. Supp. Br. at 3.)

16 United Rentals’ first argument is correct but irrelevant. The Agreement’s forum  
17 selection clause does not divest the court of subject matter jurisdiction over this action.<sup>1</sup>  
18 *See, e.g., Kamm v. ITEX Corp.*, 568 F.3d 752, 754 (9th Cir. 2009) (“[T]he Supreme Court

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19  
20 <sup>1</sup> Subject matter jurisdiction is not at issue here. The court has federal question  
21 jurisdiction over Mr. Powell’s FLSA claims and supplemental jurisdiction over his related state  
22 law claims. *See* 28 U.S.C. §§ 1331, 1367; (TAC.) As a result, the court has jurisdiction over  
United Rentals’ motion to compel arbitration. 9 U.S.C. §§ 3-4; *see also Moses H. Cone  
Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983) (noting that “Section 4  
provides for an order compelling arbitration . . . when the federal district court would have  
jurisdiction over a suit on the underlying dispute”).

1 has held that a forum selection clause does not deprive a federal court of subject matter  
2 jurisdiction.”) (citing *Bremen*, 407 U.S. at 12). But, “a contractual forum selection clause  
3 challenges venue, not subject matter jurisdiction.” *Banco de Mexico v. Orient Fisheries*,  
4 No. 2:07-CV-07043 GAF (AJWx), 2010 WL 11519508, at \*3 (C.D. Cal. June 28, 2010)  
5 (citing *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996)). In other  
6 words, the court cannot ignore the forum selection clause simply because the court has  
7 subject matter jurisdiction.

8 United Rentals’ second argument—that Mr. Powell has waived his ability to  
9 invoke the forum selection clause by failing to move to transfer venue to Connecticut—is  
10 also unpersuasive. Waiver of a forum selection clause “will only be found where there is  
11 clear, decisive, and unequivocal conduct manifesting such an intent.” *Neighborcare*  
12 *Health v. Porter*, No. C11-1391JLR, 2012 WL 13049188, at \*4 (W.D. Wash. July 24,  
13 2012) (citing *Central Ariz. Water Conservation Dist. v. United States*, 32 F. Supp. 2d  
14 1117, 1138 (D. Ariz. 1998)). For example, courts have found that a party waives a forum  
15 selection clause where the party sues to enforce a contract in an unauthorized forum,  
16 *Unity Creations, Inc. v. Trafcon Indus., Inc.*, 137 F. Supp. 2d 108, 111 (E.D.N.Y. 2001),  
17 or “sit[s] on its forum selection rights . . . until such time as things go unfavorably,” *E. &*  
18 *J. Gallo Winery v. Encana Energy Servs., Inc.*, 388 F. Supp. 2d 1148, 1162-63 (E.D. Cal.  
19 2005). The party asserting waiver bears the burden of proving waiver by clear and  
20 convincing evidence. *Neighborcare Health*, 2012 WL 13049188, at \*4.

21 Here, United Rentals fails to show that Mr. Powell has waived the forum selection  
22 clause. Far from manifesting intent to disregard the forum selection clause, Mr. Powell

1 vigorously asserts that the court must give effect to the clause—a position at odds with  
2 United Rentals’ contention that the parties have “mutually declin[ed] to enforce the  
3 choice-of-venue clause.” (Reply at 3; Resp. at 5-6.) Moreover, Mr. Powell explains that  
4 he has not filed a motion to transfer venue because he believes the forum selection clause  
5 does not encompass his underlying wage-and-hour claims. (*See* Pl. Supp. Br. at 1-2.)  
6 The court need not reach the merits of this position but is persuaded that Mr. Powell has  
7 made a good faith argument in support of his contention that the court must heed the  
8 forum selection clause despite his failure to file a motion to transfer venue.

9 Finally, United Rentals argues that giving effect to the forum selection clause  
10 would thwart the purpose of the FAA: the speedy and efficient resolution of motions to  
11 compel arbitration. (Def. Supp. Br. at 3.) United Rentals rightly emphasizes that  
12 Congress enacted the FAA because it wanted “to move the parties to an arbitrable dispute  
13 out of court and into arbitration as quickly and easily as possible.” *Dees v. Billy*, 394  
14 F.3d 1290, 1291-92 (9th Cir. 2005) (citation and quotation marks omitted); (*see also* Def.  
15 Supp. Br. at 3.) Yet, the FAA also reflects Congress’s intent that courts put arbitration  
16 agreements “on an equal footing with other contracts” and enforce them according to  
17 their terms. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010). Here, the  
18 terms of the Agreement are clear: only the designated courts in Connecticut may  
19 determine arbitrability. (Agreement § D.) The court cannot wave away the forum  
20 selection clause simply because it would be more speedy or convenient for this court to  
21 decide the motion to compel arbitration. *See Pinkus v. Sirius XM Radio, Inc.*, 255 F.  
22 Supp. 3d 747, 751 (N.D. Ill. 2017) (emphasizing that “[c]onsiderations of judicial

1 economy alone do not permit [courts] to ignore a presumptively valid forum selection  
2 clause”) (alterations in original) (quoting *Global Quality Foods, Inc. v. Van Hoekelen*  
3 *Greenhouses, Inc.*, No. 16-cv-00920-LB, 2016 WL 4259126, at \*5 (N.D. Cal. Aug. 12,  
4 2016)); *cf. Atl. Marine Constr. Co. v. United States Dist. Ct. for the W. Dist. of Tex.*, 571  
5 U.S. 49, 63 (2013) (stating that “a valid forum-selection clause should be given  
6 controlling weight in all but the most exceptional cases”).

7 In sum, none of United Rentals’ arguments persuades the court that, despite the  
8 Agreement’s forum selection clause, the court may decide United Rentals’ motion to  
9 compel arbitration. The court now considers how to best effectuate the forum selection  
10 clause.

## 11 2. Enforcement of the Forum Selection Clause

12 In their briefing and at oral argument, the parties discussed two ways the court  
13 may give effect to the Agreement’s forum selection clause. First, the court could *sua*  
14 *sponte* transfer the entire action to the District of Connecticut. (*See* Pl. Supp. Br. at 3-5  
15 (arguing against *sua sponte* transfer); Def. 2d Supp. Br. at 1-5 (arguing that transfer  
16 would not be inappropriate).) Second, the court could deny United Rentals’ motion to  
17 compel arbitration but stay this action to allow United Rentals to file an action in a court  
18 in Connecticut to determine whether Mr. Powell’s claims are arbitrable. (*See* Def. 2d  
19 Supp. Br. at 1.) The court finds that transfer is the more appropriate option.

20 A forum selection clause is properly enforced through 28 U.S.C. § 1404(a), which  
21 codifies the doctrine of *forum non conveniens* “for the subset of cases in which the  
22 transferee forum is within the federal court system.” *Atl. Marine*, 571 U.S. at 60; *see also*

1 28 U.S.C. § 1404(a). Section 1404(a) provides that, “[f]or the convenience of the parties  
2 and witnesses, in the interest of justice, a district court may transfer any civil action to  
3 any other district . . . where it may have been brought or to any district . . . to which all  
4 parties have consented.” 28 U.S.C. § 1404(a). Typically, a forum selection clause is  
5 enforced upon a motion to transfer. *See, e.g., Atl. Marine*, 571 U.S. at 59. However, a  
6 court may, under Section 1404(a), *sua sponte* transfer a case to a contractually chosen  
7 federal forum. *See Lexington Ins. Co. v. Centex Homes*, 795 F. Supp. 2d 1084, 1090 (D.  
8 Haw. 2011) (“The court may transfer venue *sua sponte*, so long as the parties are first  
9 given an opportunity to present their views on the issue.”) (citing *Costlow v. Weeks*, 790  
10 F.2d 1486, 1488 (9th Cir. 1986)); *U.S. ex rel. QSR Steel Corp., LLC v. Safeco Ins. Co. of*  
11 *Am.*, No. 3:14-cv-1017 (VAB), 2015 WL 4393576, at \*5 (D. Conn. July 16, 2015)  
12 (“While forum selection clauses are typically enforced upon a party’s motion, the Court  
13 may *sua sponte* transfer cases to enforce forum selection clauses under section  
14 1404(a).”).

15 Mr. Powell argues that *sua sponte* transfer is inappropriate because his statutory  
16 wage-and-hour claims fall outside the scope of the Agreement’s forum selection clause.  
17 (Pl. Supp. Br. at 2.) Specifically, Mr. Powell asserts that the forum selection clause is  
18 “expressly limited to the ‘interpretation and enforcement’ of the [A]greement.” (*Id.*; *see*  
19 *also* Agreement § D.) A court may not transfer an action pursuant to a forum selection  
20 clause when the plaintiff’s claims fall outside the scope of the forum selection clause.  
21 *See In re Orange, S.A.*, 818 F.3d 956, 962 (9th Cir. 2016); *Manetti-Farrow, Inc. v. Gucci*  
22 *Am. Inc.*, 858 F.2d 509, 514 (9th Cir. 1988). As the Ninth Circuit recently explained,

1 parties must litigate a case in the forum specified in a forum selection clause only “if  
2 there [i]s anything factually within the claims that require[s] [the court] to interpret” the  
3 agreement that contains the clause. *In re Orange*, 818 F.3d at 963. By extension, claims  
4 fall outside the scope of a forum selection clause when the “claims [do] not require  
5 analyzing [the agreement] to decide them.” *Id.* at 962.

6 The court sees the logic of Mr. Powell’s argument: assuming Mr. Powell’s  
7 wage-and-hour claims are not found to be arbitrable, those claims would not be  
8 substantively related to, or governed by, the Agreement. Ultimately, however, Mr.  
9 Powell’s argument is unavailing. Where a defendant asserts a contractual defense to a  
10 plaintiff’s statutory claims, and the contract at issue includes a forum selection clause,  
11 “the forum selection clause is ‘inextricably intertwined with the construction and  
12 enforcement of the parties’ agreement’ and therefore applies.” *Sun v. Kao*, 170 F. Supp.  
13 3d 1321, 1324 n.1 (W.D. Wash. 2016) (quoting *Arreguin v. Glob. Equity Lending, Inc.*,  
14 No. C 07-06026 MHP, 2008 WL 4104340, at \*4 (N.D. Cal. Sept. 2, 2008)). Here, United  
15 Rentals asserts the contractual defense that Mr. Powell agreed to arbitrate all claims  
16 arising under the FLSA and related state laws. (*See generally* Mot.; Am. Answer (Dkt.  
17 # 58) ¶ 16.) As a result, a court must interpret the Agreement’s arbitration provisions  
18 before it may address the merits of Mr. Powell’s claims. *See Sun*, 170 F. Supp. 3d at  
19 1324 n.1. Mr. Powell’s claims thus fall within the scope of the forum selection clause.<sup>2</sup>

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21 <sup>2</sup> In his supplemental brief, Mr. Powell cites various cases in which courts found  
22 choice-of-law provisions inapplicable to plaintiffs’ wage-and-hour claims. (Pl. Supp. Br. at 1-3.)  
Mr. Powell cites these cases to support his argument that the Agreement’s forum selection clause  
does not encompass his statutory causes of action. (*Id.*) But choice-of-law provisions are

1           Additionally, Mr. Powell contends that the private interest factors articulated in  
2 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000), weigh heavily  
3 against transfer. (Pl. Supp. Br. at 3-4.) A district court ordinarily considers public and  
4 private interest factors when considering whether to transfer an action under Section  
5 1404(a). *See Jones*, 211 F.3d at 498 (articulating a nine-factor balancing test based  
6 predominantly on the convenience of the parties and witnesses).<sup>3</sup> But, “[t]he calculus  
7 changes” when there is a valid forum selection clause. *Atl. Marine*, 571 U.S. at 63. In  
8 that case, “[a] court . . . must deem the private-interest factors to weigh entirely in favor  
9 of the preselected forum” and “may consider arguments about public-interest factors  
10 only.” *Id.* at 64. Such public interest factors “may include the administrative difficulties  
11 flowing from court congestion; the local interest in having localized controversies  
12 decided at home; and the interest in having the trial of a diversity case in a forum that is  
13 at home with the law.” *Id.* at 62, n.6 (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235,  
14 241 n.6 (1981)) (quotation marks and alteration omitted); *see also Nat’l Prods., Inc. v.*  
15 *Wireless Accessory Sols., LLC*, No. 15-2024JLR, 2018 WL 1709494, at \*2 (W.D. Wash.

16  
17 “separate and distinct” from forum selection clauses. *Multimin USA, Inc. v. Walco Internation,*  
18 *Inc.*, No. CV F 06-0226 AWI SMS, 2006 WL 1046964, at \*6 (E.D. Cal. Apr. 11, 2006). No  
19 choice-of-law issues are present here, and the cases Mr. Powell cites are not relevant to the issue  
20 before the court, *i.e.*, whether to transfer this case in accordance with a mandatory forum  
21 selection clause.

22  
23           <sup>3</sup> The *Jones* test balances the following factors: “(1) the location where the relevant  
24 agreements were negotiated and executed, (2) the state that is most familiar with the governing  
25 law, (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts with the forum, (5) the  
26 contacts relating to the plaintiff’s cause of action in the chosen forum, (6) the differences in the  
27 costs of litigation in the two forums, (7) the availability of compulsory process to compel  
28 attendance of unwilling non-party witnesses, . . . (8) the ease of access to sources of proof,” and  
29 (9) the public policy considerations of the forum state. *Jones*, 211 F.3d at 498-99.



1 Apr. 8, 2018) (listing additional public interest factors, including judicial efficiency).  
2 Under *Atlantic Marine*, the public interest factors will rarely limit transfer because, “[i]n  
3 all but the most unusual cases, . . . the interest of justice is served by holding parties to  
4 their bargain.” *Atl. Marine*, 571 U.S. at 66. “[T]he practical result is that forum-selection  
5 clauses should control except in unusual cases.” *Id.* at 64.<sup>4</sup>

6 Because the Agreement includes a valid forum selection clause, the court must  
7 deem the private interest factors Mr. Powell emphasizes to weigh entirely in favor of  
8 transfer to Connecticut. *Id.* at 64. In addition, Mr. Powell does not show that the public  
9 interest considerations are so exceptional as to warrant ignoring the forum selection  
10 clause. Indeed, in opposing transfer, Mr. Powell altogether fails to address the public  
11 interest factors a court must consider under *Atlantic Marine*. (*See generally* Pl. Supp. Br.  
12 at 3-4); *see also Atl. Marine*, 571 U.S. at 62, n.6. In any event, this is not the “unusual  
13 case[]” in which transfer is inappropriate notwithstanding a forum selection clause. *See*  
14 *Atl. Marine*, 571 U.S. at 64. Transferring this action will not give rise to particular  
15 administrative difficulties. *See Piper Aircraft*, 454 U.S. at 241 n.6. Although the  
16 Western District of Washington has a local interest in affording a forum to residents like  
17 Mr. Powell, *see id.*, the District of Connecticut has a similar interest in providing United  
18 Rentals, a Connecticut resident, a forum to enforce its contracts. Most important, “the

19  
20 <sup>4</sup> The Supreme Court decided *Atlantic Marine* on a motion to transfer venue. Courts that  
21 have *sua sponte* transferred cases pursuant to forum selection clauses, however, have applied the  
22 *Atlantic Marine* framework. *See, e.g., QSR Steel Corp.*, 2015 WL 4393576, at \*5-9; *Eisaman*  
*Contract Assocs., Inc. v. Smith Sys. Mfg., Co.*, No. 2:17-cv-00061-RCM, 2017 WL 2378123, at  
\*5 (W.D. Penn. June 1, 2017); *McCusker v. hibu PLC*, No. 14-5670, 2015 WL 1600066, at \*5  
(E.D. Penn. Apr. 8, 2015).

1 interest of justice” is best served by holding Mr. Powell and United Rentals to their  
2 contractually agreed upon forum. *See Atl. Marine*, 571 U.S. at 66.

3 Finally, the court notes that other courts faced with forum selection clauses vesting  
4 specific tribunals with exclusive authority to determine arbitrability have concluded that  
5 transfer to the selected tribunal was warranted where the defendant sought to compel  
6 arbitration. For example, in *Blount v. Northrop Grumman Information Technology*  
7 *Overseas, Inc.*, No. 14-cv-498-CAB (WVG), 2014 WL 12577033 (S.D. Cal. July 23,  
8 2014), the district court addressed an employment agreement that mandated arbitration of  
9 all employment-related claims and vested “the state and federal courts in Virginia” with  
10 exclusive jurisdiction to determine “the arbitrability of any dispute” arising under the  
11 agreement. *Id.* at \*1. The defendant moved to compel arbitration of the plaintiff’s claims  
12 or, in the alternative, transfer venue to a United States District Court in Virginia. *Id.* at  
13 \*2. After finding the forum selection clause enforceable, the court transferred the action  
14 to the Eastern District of Virginia on the ground that, under the employment agreement,  
15 “determinations as to arbitrability must be made by a state or federal court in Virginia.”  
16 *Id.*; *see also Finucane Enters., Inc. v. Arizant Healthcare, Inc.*, No. 05-CV-2163 JWL,  
17 2005 WL 8160523, at \*3-5 (D. Kan. Aug. 25, 2005) (granting the defendants’ motion to  
18 transfer venue to the District of Minnesota because the agreement at issue vested “courts  
19 located in the State of Minnesota” with “exclusive jurisdiction” to determine issues of  
20 arbitrability).

21 Here, too, transfer will effectuate the parties’ contractual agreement to entrust a  
22 particular forum with “exclusive jurisdiction” to determine threshold issues of

1 arbitrability. (*See* Agreement § D.) The court thus TRANSFERS this action to the  
2 United States District Court for the District of Connecticut.

3 **D. Mr. Powell’s Request for a Stay**

4 Mr. Powell requests that the court stay its transfer order that he may seek appellate  
5 review under 28 U.S.C. § 1292 or a writ of mandamus. (Pl. Supp. Br. at 4-5.) The court  
6 finds that a stay is unwarranted. First, interlocutory appeals are appropriate “only in  
7 extraordinary cases where decision of an interlocutory appeal might avoid protracted and  
8 expensive litigation” and are “not intended merely to provide review of difficult rulings  
9 in hard cases.” *U.S. Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966). Moreover,  
10 the Ninth Circuit Court of Appeals has “long held that in extraordinary circumstances  
11 involving a grave miscarriage of justice, [it] ha[s] power via mandamus to review an  
12 order transferring a case to a district court in another circuit,” even after the case has been  
13 docketed in the transferee court. *NBS Imaging Sys., Inc. v. United States Dist. Ct. for the*  
14 *E. Dist. of Cal.*, 841 F.2d 297, 297 (9th Cir. 1988). As a result, Mr. Powell is not  
15 precluded from seeking mandamus in the Ninth Circuit even after transfer is complete.

16 *See id.*

17 **IV. CONCLUSION**

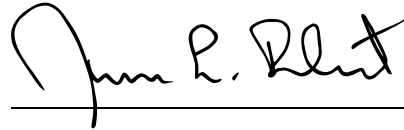
18 For the foregoing reasons, the court DECLINES to rule on United Rentals’ motion  
19 to compel arbitration (Dkt. # 62) and TRANSFERS this action to the United States  
20 District Court for the District of Connecticut. The court DENIES Mr. Powell’s motion to

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22 //

1 stay the transfer order. The court DIRECTS the Clerk to transfer this action in  
2 accordance with Local Civil Rule 3(i) and close this file.

3 Dated this 3rd day of April, 2019.

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6 The Honorable James L. Robart  
7 U.S. District Court Judge  
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