



## Reyes v. Hearst Communications, Inc.

2021 | Cited 0 times | N.D. California | August 24, 2021

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

MANUEL REYES,

Plaintiff, v. HEARST COMMUNICATIONS, INC.,

Defendant.

Case No. 21-cv-03362-PJH

ORDER DENYING MOTION TO COMPEL ARBITRATION Re: Dkt. No. 14

Defendant Hearst Communications, Inc. arbitration came on for hearing before this court on August 12, 2021. Plaintiff Manuel

Vega. Defendant appeared through its counsel, Richard Lapp and Andrew Cockroft.

relevant legal authority, and good cause appearing, the court DENIES motion.

BACKGROUND Defendant distributes online and print media content. Dkt. 1 (Compl.) ¶ 8. Plaintiff Id. ¶ 11. He various publications for defendant. Dkt. 23-4 ¶¶ 2, 24. Those publications include the

San Francisco Chronicle, Wall Street Journal, China Daily, Korean Times, and New York Times, id. ¶ 25, as well as other advertisements, id. delivery is limited to the Bay Area. Compl. ¶ 10(c); Dkt. 14-1 at 26-27.

On May 5, 2021, plaintiff filed the instant action against defendant. In his complaint, plaintiff alleges that defendant has misclassified him as an independent

contractor. Compl. ¶¶ 8, 11-12. Based on that purported misclassification, plaintiff alleges numerous claims under the California Labor Code, the Fair Labor Standards Act, and the California Business & Professions Code. Id. ¶¶ 22-84.

On July 7, 2021, defendant filed the instant motion to compel this action to arbitration. Dkt. 14. To support its request, defendant relies on both the Federal et. seq. and its state law counterpart, the et.



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seq.. Id.

Defendants bases its motion on a 24-page agreement signed by plaintiff on December 2, 2019. Dkt. 14- Id. at 4. 1

The court will refer to it as the The contractor agreement comprises 23 paragraphs and various schedules. Paragraph 18 details the arbitration provision at issue. Id. ¶ 18. That paragraph comprises eleven subparts. Id. ¶ 18(a)-(k). The court will detail the contractor agreement, the arbitration provision, and other relevant facts as necessary below.

DISCUSSION As noted above, defendant relies on the FAA and CAA as alternative grounds for granting its requested relief. The court addresses the applicability of each act in turn.

### I. The FAA Does Not Apply to This Action

The FAA generally provides that arbitration agreements shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 909 (9th Cir. 2020), cert. denied, 141 S. Ct. 1374, 209 L. Ed. 2d 121 (2021). Any party bound to an arbitration agreement that falls within the scope of the FAA may bring a motion to compel arbitration and stay the proceeding pending resolution of the arbitration. 9 U.S.C. §§ 3-4; *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004). The

1 In support of his opposition, plaintiff attaches an identical 24-page agreement to his declaration. Compare Dkt. 14-1 at 4- with Dkt. 23-4 at 26-49 The court will cite only docket 14-1 when discussing the agreement.

FAA requires the court to compel arbitration of issues covered by the arbitration agreement. *Dean Witter Reynolds, Inc., v. Byrd*, 470 U.S. 213, 218 (1985).

Title 9 U.S.C. § 2, however, exempts certain contracts from its scope, specifically the employment contracts of seamen, railroad employees, and any other class of workers engaged in foreign or interstate commerce. *Rittmann*, 971 F.3d at 909.

In *Rittman*, the Ninth Circuit considered whether workers who provided delivery deliveries of packaged products from Amazon warehouses to the packages .

*Rittmann*, 971 F.3d at 907. Those workers were primarily engaged in intrastate deliveries. Id. They ed state lines to make such deliveries. Id.

The panel in *Rittman* held that the delivery workers fell within the scope of Title 9 Id. at 909. Relevant here, the panel reasoned that the subject merce until they are Id. at 915. It explained that,



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because the Amazon workers completed such Id.

More recently, the Ninth Circuit considered similar facts in *Romero v. Watkins and Shepard Trucking Inc.*, -- F.4th --, 2021 WL 3671380 (9th Cir. Aug. 19, 2021). In that operated an interstate trucking business, and job was to deliver furniture and carpet to retail stores in California. The product often originated from outside of the state, but [plaintiff] made deliveries only within California. *Romero*, 2021 WL 3671380 at \*1. Citing *Rittman*, the panel in *Romero* found that the nature of the goods delivered by plaintiff put hi Id. at \*3.

The court concludes that *Rittman* and *Romero* control its determination that plaintiff qualifies as a transportation worker engaged in interstate commerce. Critically, in - newspapers arrive to Id. ¶ 27.

In its reply, defendant does not proffer any evidence contesting the accuracy of . It also fails to offer any evidence otherwise suggesting that the subject publications come from within California.

Based on p , the court finds that the publications delivered by plaintiff come from outside California. Because plaintiff delivers such publications to their subscribers in the Bay Area, he qualifies as a worker *Rittmann*, 971 F.3d at 909; *Romero*, 2021 WL

3671380, at \*3. Given that, the court concludes that the FAA does not apply to this action in the first instance.

the meaning of Title 9 U.S.C. § 2

because he may enlist third parties to deliver publications on his behalf. Dkt. 24 at 14. Perhaps. But t he himself ns. Dkt. 23-4 ¶¶ 24-28.

Second, defendant argues that plaintiff may not rely on *Rittman* because the admits that he -15.

Both criticisms miss the mark. With respect to the first criticism, the fact that plaintiff not only delivers but also assembles the subject publications does not detract from his role in moving them through the channels of interstate commerce. The second criticism fundamentally misunderstands *Rittman* ruling. *Rittman*, 971 F.3d at 915 conclude that § 1 exempts transportation workers who are engaged in the movement of goods in interstate commerce, even if they do not cross state lines. II. The CAA Does Not Provide an Alternative Basis to Compel Arbitration

California Code of Civil Procedure § 1281 states that:

A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist



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for the revocation of any contract.

The California Supreme Court has explained that, as a general matter, CCP § 1281 and Title 9 U.S.C. § 2 are identical in that both sections require courts to enforce an *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83,

98 (2000). Unlike the FAA, though, the CAA does not exempt workers engaged in interstate commerce. *Id.*

In its reply, defendant picks up on that distinction. Pivoting its argument away from the FAA, defendant (in)applicability, the CAA requires the court to compel this action to arbitration. Dkt. 24 at 8-9.

The court disagrees. Following , the Ninth Circuit issued its decision in *Lim v. TForce Logistics, LLC*, -- F.4th --, 2021 WL 3557294 (9th Cir. Aug. 12, 2021). In *Lim*, the panel considered the unconscionability of an agreement between a company and an allegedly misclassified employee-worker. *Id.* at \*2. Relevant here, the agreement included an arbitration provision that generally required the parties *Id.*

The panel in *Lim* held that that arbitration fee-splitting requirement is substantively unconscionable under California law. *Lim*, 2021 WL 3557294, at \*8. To support that holding, the panel relied on the *Armendariz* that:

[W]hen an employer imposes mandatory arbitration as a condition of employment, the arbitration agreement or arbitration process cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court. *Lim*, 2021 WL 3557294, at \* 6 (citing *Armendariz*, 24 Cal. 4th at 110-11) (emphasis in the original). In this case, the arbitration provision includes a substantially similar requirement at paragraph 18(j). In particular, that subparagraph states the following:

(j) Each party will pay the fees for his, her or its own attorneys, subject to any remedies to which that party may later be entitled under applicable law. The Arbitrator's and/or arbitration fees will be apportioned equally between the parties, and any disputes in that regard will be resolved by the Arbitrator.

Dkt. 14-1 at 16 ¶ 18(j) (emphasis added).

-splitting requirement extends to all arbitration fees. Such fees may include both those incurred for an arbitrator to determine the gateway issue of whether an action is subject to arbitration and, if so, the merits of such action. Accordingly, the court concludes that paragraph 18(j) is substantively unconscionable with respect to both the delegation clause (paragraph 18(c) in particular) and



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arbitration provision (paragraph 18 more broadly).

That leaves only procedural unconscionability. That element focuses on *Lim*, 2021 WL 3557294, at \*5. In his declaration, plaintiff states that he primarily speaks Spanish, is not fluent in reading or writing English, and was offered only an English version of the contractor agreement. Dkt. 23-4 ¶¶ 3, 6, 9. into the same form agreements with blank sections Id. ¶ 17.

Defendant does, s. Dkt. 24-2 ¶¶ 17-19. In light of the evidence presented, t version on that issue persuasive. Based on the above two statements, the court concludes that plaintiff proffered sufficient evidence of surprise and oppression to justify finding that the arbitration provision qualifies as unconscionable.

To be sure, the court understands that the parties offer conflicting evidence concerning numerous other procedural unconscionability-related facts. For example, the parties dispute whether defendant required plaintiff to sign the contractor agreement as a condition of employment. Compare Dkt. 23-4 ¶ 10 with Dkt. 24-2 ¶ 20. That said, given , the court need n . *Lim*, 2021 WL 3557294, at \*5 scale . . . such that the more substantively oppressive the contract term, the less

evidence of procedural unconscionability is required to come to the conclusion that the Because paragraph 18(j) -splitting requirement is unconscionable and extends to all arbitration expenses, the court concludes that the arbitration provision is unenforceable in its entirety.

Lastly, to the extent defendant invites the court to simply sever paragraph 18(j), Dkt. 24 at 12-13, the court declines. First, defendant does not explain why such severance would be justified under California Civil Code § 1670.5 in the first instance. Second, the panel in *Lim* expressly recognized that district courts properly deny a request to sever an unconscionable term if doing so would encourage perso *Lim*, 2021 WL 3557294, at

\*9. The court finds that, in this case, severing paragraph 18(j) would incentivize such improper, strategic behavior.

For the above reasons, the court position that the CAA separately requires the court to compel this action to arbitration.

CONCLUSION For the above reasons, the court DENIES to arbitration.

IT IS SO ORDERED. Dated: August 24, 2021

/s/ Phyllis J. Hamilton PHYLLIS J. HAMILTON United States District Judge

