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9 dba MASTER DOG TRAINING,
10 Ekaterina Korotun an individual
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**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE**

11 DYLAN YEISER-FODNESS, an	)	Case No.: 22STCV21852
12 individual)	
13 Plaintiff,	)	Defendant' 5 Star K-9 Academy, Inc
14 vs.	)	dba Master Dog Training, NOTICE OF MOTION to
15 MASTER DOG TRAINING ET AL.	)	compel arbitration and for order to stay proceedings
16 Defendants.	)	pursuant to Code of Civil Procedure sections 1281.2
	)	and 1281.4
	)	Date of Hearing: 04/12/2023
	)	Time of Hearing: 9:00 am
	)	Reservation ID: 391122088349
	)	Confirmation Code: CR-CR2D4OHECV5FHXDU4
	)	Department: 52, Room 510
)	Judge: Hon. Armen Tamzarian
)	Date Action Filed: 07/06/2022
)	Trial Date: February 7, 2024
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TO all parties and their respective attorneys of records:

NOTICE IS HEREBY GIVEN that on 04/12/2023 at 9:00 AM, or as soon thereafter as the matter may be heard, in Department 52 of the Stanly Mosk Courthouse located at 111 N Hill St, Los Angeles, CA 90012, DEFENDANT 5 STAR K-9 ACADEMY, Inc dba MASTER DOG TRAINING, will, and hereby does, move the court for an order to arbitrate certain controversies specified in the motion, a copy of which is served herewith, and for order to stay proceedings pursuant to Code of Civil Procedure sections 1281.2 and 1281.4, will be heard by the court.

This petition is based on:

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- (a) the Agreement for training services (with arbitration clause) dated 10/08/2022 and signed by the Plaintiff, which is served with this petition and attached herein as exhibit 01,
- (b) this notice of motion,
- (c) complaint filed on 07/06/2022 in the Superior court of California, County of Los Angeles, in an action entitled DYLAN YEISER-FODNESS VS MASTER DOG TRAINING, A CALIFORNIA CORPORATION, ET AL
- (d) on the memorandum served and filed herewith,
- (e) reservation for hearing served and filed herewith, and
- (f) on the records and file herein, and on such evidence as may be presented at the hearing of the motion.

Respectfully Submitted

Dated: 3/19/2023

Law Offices of Natalia Foley



By Natalia Foley, Esq (SBN 295923)

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**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE**

DYLAN YEISER-FODNESS, an individual	)	Case No.: 22STCV21852
Plaintiff,)	
vs.	)	Defendant' 5 STAR K-9 ACADEMY, Inc
MASTER DOG TRAINING ET AL.	)	dba MASTER DOG TRAINING, Motion to compel
Defendants.	)	arbitration and for order to stay proceedings pursuant
	)	to Code of Civil Procedure sections 1281.2 and
	)	1281.4
	)	Date of Hearing: 04/12/2023
	)	Time of Hearing: 9:00 am
	)	Reservation ID: 391122088349
	)	Confirmation Code: CR-CR2D4OHECV5FHXDU4
	)	Department: 52, Room 510
)	Judge: Hon. Armen Tamzarian
)	Date Action Filed: 07/06/2022
)	Trial Date: February 7, 2024
)	

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23 Come here Defendant 5 STAR K-9 ACADEMY, Inc dba MASTER DOG TRAINING,
24 erroneously sued as 5 STAR K-9 ACADEMY, Inc and MASTER DOG TRAINING, Inc, via its
25 attorney of records and alleges as follow:

26 **STATEMENT OF FACTS:**

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28 1) On or about 10/08/2020, Plaintiff DYLAN YEISER-FODNESS (hereinafter – Plaintiff) and
defendant 5 STAR K-9 ACADEMY (hereinafter – Defendant), entered into written valid
enforceable agreement in the state of California, county of Los Angeles (hereinafter – agreement).

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2) The parties to the agreement agreed to arbitrate all disputes arising out of the agreement. A copy of the agreement is attached as Exhibit "01" and made a part hereof. The arbitration clause of the agreement specifically states:

"Parties agree to use their best efforts to resolve any relevant to this agreement issues amicably in good faith and fair dealing through negotiation. If unresolved, any claim or dispute, whether in contract, tort, statute, Labor Code, employment law or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute) between both parties or their employees, agents, successors or assigns, which arises out of or is related to this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall be resolved by neutral, binding arbitration and not by a court action. Binding arbitration shall be held before a single arbitrator in Los Angeles, California in accordance with the American Arbitration Association's National Rules. Notwithstanding this agreement to arbitrate, neither party shall be precluded from seeking injunctive relief in a judicial forum."

3) On or about 07/06/2022, Plaintiff filed a lawsuit against the defendant.

4) In his complaint, Plaintiff alleged violation of his rights by the Defendant under the various sections of the Labor Code, employment law, statutes and otherwise.

5) By filing his complaint with the court, Plaintiff refused to arbitrate.

6) Defendant therefore is entitled to enforce the arbitration clause because the defendant is a party to the agreement where Plaintiff is a beneficiary of the agreement and thus is estopped from asserting the right to a judicial action on account of the fact that the causes of action against the defendant are intimately founded in and intertwined with the underlying contract obligations of the agreement containing the arbitration clause.

1 7) Defendant further is entitled to have this concurrent lawsuit proceedings stayed while the
2 arbitration proceeds to avoid conflicting rulings on common issues of fact and law amongst
3 interrelated parties.

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5 8) On 10/14/2022 defendant 5 STAR K-9 ACADEMY, Inc dba MASTER DOG TRAINING
6 (hereinafter – Defendant) filed its Motion to compel arbitration being unaware that the default by
7 clerk against defendant was already entered on October 3, 2022.

8 9) Defendant’s motion to compel arbitration was denied without prejudice ion the ground that
9 defendant was in default.

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11 10) On January 26, 2023, default against defendant was vacated.

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13 11) Defendant therefore is submitting its renewed motion to compel arbitration.


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15 WHEREFORE, petitioner prays:

- 16 1. That the court order Plaintiff to arbitrate the controversy as herein alleged.
17 2. That the lawsuit stayed while the arbitration proceeds.
18 3. That Defendant be awarded costs of suit and attorney’s fees herein incurred.
19 4. For such other and further relief as the court may deem proper.

20
21 Respectfully Submitted

22 Dated: 3/19/2023

23 Law Offices of Natalia Foley

24 
By Natalia Foley, Esq (SBN 295923)

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **TABLE OF AUTHORITIES**

4 California Code of Civil Procedure section 1281 et. seq.

5 California Code of Civil Procedure section 1281.4

6 Code Civ. Proc. § 1281.2

7 Cal. Rules of Court, rule 371

8 American Arbitration Association’s National Rules

9 AAA Employment Arbitration Rules

10 AAA Employment Rules 15

11 AAA Employment Rule 39(d).

12 AAA Employment Rule 39(c).

13 Applicable Rules of Arbitration, [https://www.adr.org/sites/default/files/Employment-Rules-](https://www.adr.org/sites/default/files/Employment-Rules-Web.pdf)
14 [Web.pdf](https://www.adr.org/sites/default/files/Employment-Rules-Web.pdf).

15 Aanderud v. Superior Court (2017) 13 Cal. App. 5th 880, 892, 221 Cal. Rptr. 3d 225.

16 Adajar v. RWR Homes, Inc. (2008) 160 Cal.App.4th 563, 569–571

17 Armendariz v. Foundation Health Psychcare Services, Inc. 24 Cal. 4th 83, 1 14 (2000).

18 Boys Club of San Fernando Valley, Inc. v. Fidelity & Deposit Co. (1992) 6 Cal.App.4th 1266,
19 1271–1274].

20 Bono v. David (2007) 147 Cal.App.4th 1055, 1067

21 Bruni v. 7 Didion, 1 60 Cal. App. 4th 1 272, 1288 (2008)

22 Baltazar v. Forever 21, Inc. , 62 Cal .4th 1 237, 1 2 1 245 (201 6)

23 Condee v. Longwood Management Corp., 88 Cal. App. 4th 215

24 Craig v. Brown & Root, Inc., 84 Cal. App. 4th 416, 420 (2000);

25 Charles J Rounds Co. v. Joint Council of Teamsters No. 42, 4 Cal.3d 888, 890, 894, 900 (1971)

26 Crippen v. Central Valley R V Outlet, Inc., 124 Cal. App. 4th 1159, 1165 (2004).

27 Cohen v. TNP 2008 Participating Notes Program, LLC (2019) 31 Cal. App. 5th 840, 855, 243
28 Cal. Rptr. 3d 340

Coopers & Lybrand v. Superior Court, 212 Cal.App.3d 530 (1986).

Charles J. Rounds Co. v. Jt. Council of Teamsters No. 42 (1971) 4 Cal. 3d 888, 892, 95 Cal. Rptr.
53, 484 P.2d 1397; Morris v. Zukerman (1967) 257 Cal. App. 2d 91, 96, 64 Cal. Rptr. 714

1 Div. of Labor Law Enforcement v. Transpacific Trans. Co., 69 Cal. App. 3d 268, 274-75 (1977)
2 Emps. Int’l Union v. City of L.A. (1994) 24 Cal. App. 4th 136, 143, 29 Cal. Rptr. 2d 357
3 Freeman v. State Farm Mut. Auto. Ins. Co. (1975) 14 Cal. 3d 473, 479–480, 121 Cal. Rptr. 477,
4 535 P.2d 341
5 Fed. Ins. Co. v. Superior Court, 60 Cal. App. 4th 1370, 1374-75 (1998)
6 Farrar v. Direct Commerce, Inc., 9 Cal. App. 5th 1257, 215 Cal. Rptr. 3d 785, 2017 Cal. App.
7 LEXIS 262, 2017 WL 10904830
8 Grupe Development Co. v. Superior Court (1993) 4 Cal. 4th 911, 921 [16 Cal. Rptr. 2d 226, 844
9 P.2d 545
10 Gatton v. T-Mobile USA, Inc., 152 Cal. App. 4th 571 , 581 (2007).
11 Gutierrez v. Autowest, Inc., 114 Cal. App. 4th 77, 7 Cal. Rptr. 3d 267, 2003 Cal. App. LEXIS
12 1817, 2003 Cal. Daily Op. Service 10633, 2003 D.A.R. 13405).
13 Gostev v. Skillz Platform, Inc. (Feb. 28, 2023, No. A164407) Cal.App.5th [2023 Cal. App.
14 LEXIS 139].
15 Giuliano v. Inland Empire Personnel, Inc., 149 Cal. App. 4th 1276, 58 Cal. Rptr. 3d 5, 2007 Cal.
16 App. LEXIS 611, 2007 Cal. Daily Op. Service 4278, 2007 D.A.R. 5413, 154 Lab. Cas.
17 (CCH) P60400).
18 Harris, 248 Cal. App. 4th at 381.
19 Howard v. Goldbloom (2018) 30 Cal.App.5th 659, 663
20 Hyundai Amco America, Inc. v. S3H, Inc.(2014) 232 Cal.App.4
21 Henry Schein, Inc. v. Archer & White Sales, Inc. (2019) 586 U.S. ____ [202 L. Ed. 2d 480, 139
22 S.Ct. 524, 530
23 Izzi v. Mesquite Country Club, 186 Cal.App.3d 1309 (1986).
24 Little v. Auto Stiegler, Inc. (2003)] 29 Cal.4th [1064,] 1071 [130 Cal. Rptr. 2d 892, 63 P.3d 979
25 Marsch v. Williams (1994) 23 Cal.App.4th 250, 255]
26 Mitsubishi Motors v. Soler Chrysler-Plymouth, Inc. (1985) 473 U.S. 614, 626 [105 S. Ct. 3346,
27 3353-3354, 87 L. Ed. 2d 444
28 Moses H Cone-Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1975).
Nelson v. Dual Diagnosis Treatment Center, Inc. (2022) 77 Cal.App.5th 643, 654 [292 Cal. Rptr.
3d 740
Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 925 [216 Cal. Rptr. 345, 702 P.2d 503
Pinnacle[, supra,] 55 Cal.4th [at p.] 246

1 Pinnacle Museum Tower Assn. v. PinnacleMarket Development (US), LLC, 55 Cal .4th 223, 246
2 (2012)
3 Parada v. Superior Court, 176 Cal. App. 4th 1554, 98 Cal. Rptr. 3d 743, 2009 Cal. App. LEXIS
4 14160;
5 Pinnacle Museum Tower Assn., 55 Cal.4th at 236 (general contract law principles determine
6 whether arbitration agreement binding);
7 RN Solution, Inc. v. Catholic Healthcare West (2008) 165 Cal.App.4th 1511, 1523
8 Spear v. Cal. State Auto. Ass’n (1992) 2 Cal. 4th 1035, 1040–1043, 9 Cal. Rptr. 2d 381, 831 P.2d
9 821].
10 State Farm Mut. Auto Ins. Co. v. Superior Court (1994) 23 Cal. App. 4th 1297, 1301, 28 Cal.
11 Rptr. 2d 711
12 Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 910 (2015).
13 Serafin v. Balco Properties Ltd., LLC, 235 Cal.App.4th 165, 178 (2015) (review denied June 10,
14 2015)
15 Stirlen v. Supercuts, Inc. (1997) 51 Cal.App.4th 1519, 1532 [60 Cal. Rptr. 2d 138
16 Sonic II, supra, 57 Cal.4th at p. 1145
17 Sanchez, supra, 61 Cal.4th at p. 911.) (Kho, supra, 8 Cal.5th at pp. 129–130
18 Sonic-Calabasas A, Inc. v. Moreno, 57 Cal .4th 1109, 1133 (2013)
19 Valsan Partners Ltd. P’ship v. Calcor Space Facility, Inc. (1994) 25 Cal. App. 4th 809, 817, 30
20 Cal. Rptr. 2d 785
21 Wagner Constr. Co. v. Pac. Mech. Corp. (2007) 41 Cal. 4th 19, 29, 58 Cal. Rptr. 3d 434, 157 P.3d
22 1029
23 Zhang v. Superior Court (2022) 85 Cal.App.5th 167 [301 Cal.Rptr.3d 164].
24 Zoller v. GCA Advisors, LLC (9th Cir. 2021) 993 F.3d 1198, 1202).

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24 *Unconscionable Because Its Terms Are Contradictory.*

25 9. The Arbitration Provisions are Not Procedurally Unconscionable

26 10. The Arbitration Provisions Are Not Substantively Unconscionable

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28 A. Plaintiff’s Erroneously Argues That This Agreement To Arbitrate is Substantively
Unconscionable

B. Incorporation of AAA rules satisfied Armendariz’ analyses

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C. The agreement is no substantively unconscionable because it does not impair the integrity of the bargaining process

D. Application of Armendariz should be approached with cautions

11. The Parties Entered Into a Valid Agreement to Arbitrate

12. The Agreement is Enforceable

13. The Entire Litigation Must Be Dismissed, or in the Alternative, Stayed Pending the Completion of Arbitration

IV. CONCLUSION

1 **I. INTRODUCTION**

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3 Defendant is alleging that there is an existing agreement to arbitrate between Plaintiff and
4 Defendant represented by arbitration clause of the “Agreement for training services” dated
5 10/08/2020 and signed by both Plaintiff and Defendant (hereinafter – “agreement”). The above
6 agreement is marked exhibit 01, attached herein and incorporated by this reference.

7 The arbitration clause of the above agreement provides for arbitration in the following
8 terms:

9 “Parties agree to use their best efforts to resolve any relevant to this agreement
10 issues amicably in good faith and fair dealing through negotiation. If unresolved,
11 any claim or dispute, whether in contract, tort, statute, Labor Code, employment
12 law or otherwise (including the interpretation and scope of this Arbitration
13 Provision, and the arbitrability of the claim or dispute) between both parties or
14 their employees, agents, successors or assigns, which arises out of or is related to
15 this contract or any resulting transaction or relationship (including any such
16 relationship with third parties who do not sign this contract) shall be resolved by
17 neutral, binding arbitration and not by a court action. Binding arbitration shall be
18 held before a single arbitrator in Los Angeles, California in accordance with the
19 American Arbitration Association’s National Rules. Notwithstanding this
20 agreement to arbitrate, neither party shall be precluded from seeking injunctive
21 relief in a judicial forum.”

22 **A. EXISTENCE OF ENFORCEABLE ARBITRATION CLAUSE**

23 The controversy between Plaintiff and Defendant is arising out of the above agreement
24 and is within the scope of its arbitration clause. Thus, Defendant has right to enforce the
25 arbitration clause against Plaintiff.

26 (a) Plaintiff’ objection:

27 Plaintiff incorrectly stated in his opposition dated 11/14/2022, that the arbitration
28 agreement does not apply to Plaintiff’ employment with Defendant. This is an erroneous
statement.

(b) Legal Standard:

(1) Arbitration Clause May Be Incorporated by Reference.

1 An arbitration clause need not be contained in the contract under which a dispute arises,
2 but may be contained in a collateral agreement [Marsch v. Williams (1994) 23 Cal.App.4th 250,
3 255]. Thus, a dispute under a contract that does not include an arbitration clause may be subject to
4 arbitration if that contract incorporates another contract that includes an arbitration clause [Boys
5 Club of San Fernando Valley, Inc. v. Fidelity & Deposit Co. (1992) 6 Cal.App.4th 1266, 1271–
6 1274]. To be effective, the arbitration provision must be properly incorporated by a clear
7 reference to and identification of the incorporated document in which the arbitration clause
8 appears [Adajar v. RWR Homes, Inc. (2008) 160 Cal.App.4th 563, 569–571 (insufficient
9 evidence)].

9 (2) Tests for Evaluating Scope.

10 Whether a contractual arbitration clause covers a particular dispute rests substantially on
11 whether the clause in question is “broad” or “narrow” [Howard v. Goldbloom (2018) 30
12 Cal.App.5th 659, 663; Bono v. David (2007) 147 Cal.App.4th 1055, 1067]. Even a broad form
13 arbitration clause will not cover every type of dispute that might arise between those bound by it.
14 “However broad may be the terms of a contract, it extends only to those things concerning which
15 it appears that the parties intended to contract” [RN Solution, Inc. v. Catholic Healthcare West
16 (2008) 165 Cal.App.4th 1511, 1523 (quoting CC § 1648)].

17 (c) Defendant’s Analysis:

18 In this case before the honorable court the arbitration agreement applies because the
19 arbitration clause expressly states that this clause applies to “...any claim or dispute, whether in
20 contract, tort, statute, Labor Code, employment law or otherwise (including the interpretation and
21 scope of this Arbitration Provision, and the arbitrability of the claim or dispute)”. Six out of eight
22 causes of action as stated in the Plaintiff’s complaint are based on Labor Code, others are based on
23 statutes and otherwise.

24 In regard to the alleged “employee - employer” relationship between Plaintiff and
25 defendant, this agreement is significant as it specifically states that it does not create any
26 “employee - employer” relationship. In fact, it was the defendant who was hired by this
27 agreement as a trainer on the basis of independent contractor relationship.

28 Thus, the issue of “employee - employer” is disputed and therefore is essential for this
case as the actual controversy exists. This issue is relevant to the arbitration clause and should be
resolved by the arbitration.

1 It is well settled law that doubts about whether an agreement to arbitrate applies to a
2 particular dispute are to be resolved in favor of sending the parties to arbitration. (Id. at p. 24 [103
3 S.Ct. at 941].) In light of the strong federal policy favoring arbitration, the parties' intentions in an
4 arbitration contract "are generously construed as to issues of arbitrability." (Mitsubishi Motors v.
5 Soler Chrysler-Plymouth, Inc. (1985) 473 U.S. 614, 626 [105 S. Ct. 3346, 3353-3354, 87 L. Ed.
6 2d 444] (Mitsubishi).)

7 B. PLAINTIFF REFUSAL TO ARBITRATE

8 By filing a lawsuit against the Defendant, Plaintiff refused to arbitrate. This fact alone, per
9 Hyundai decision, is sufficient to show a party's refusal to arbitrate the controversy under Section
10 1281.2 and justifies granting the motion to compel arbitration (see Hyundai Amco America, Inc.
11 v. S3H, Inc.(2014) 232 Cal.App.4).

12 In this case, where Plaintiff already filed a lawsuit, formal demand to arbitrate is not
13 necessary.

14 II. PLAINTIFFS' COMPLAINT

15
16 This action was filed in this court on 07/06/2022. Plaintiffs' complaint alleges eight causes
17 of action for:

- 18 (1) Violation of Calif. Labor Code §§ 226;
- 19 (2) Violation of Calif. Labor Code §§ 1194 et sec
- 20 (3) Violation of Calif. Labor Code §§ 1198.5
- 21 (4) Violation of Calif. Labor Code §§ 226.7, 512, 558 and 1198
- 22 (5) Violation of Calif. Labor Code §§ 201-203
- 23 (6) Retaliation in Violation of Calif. Labor Code § 98.6
- 24 (7) Tortious Wrongful Termination in violation of Public Policy
- 25 (8) Violation of Cal. B&R Code §§ 17200, ET SEQ

26 The above causes of action are premised on Plaintiff's allegations of Defendant's alleged
27 various violations of Plaintiff's rights as employee, yet Plaintiff is not alleging any employment
28 contract and is not referring to the existing written agreement dated 10/08/2020 and entitled
"Agreement for training services" where Plaintiff is hiring the Defendant to be his teacher of dog'

1 training services. The hereinabove agreement also specifically denies any relationship between
2 Plaintiff and defendant on the page 6, paragraph 8(A)(B) in the following terms:

3
4 “A. Relationship of the Parties. For all purposes of this Agreement and notwithstanding
5 any provision of this Agreement to the contrary, Academy is an independent contractor
6 and is not an employer, partner, joint venturer, or agent of Student. Academy is hired by
7 Student to provide triaging services to the student. As an independent contractor,
8 Academy is solely responsible for all taxes, withholdings, and other statutory or
9 contractual obligations of any sort, including but not limited to workers' compensation
10 insurance.

11 B. No Employee Relationship. Academy's employees are not and will not be deemed to be
12 employees of Student. Student is not and will not be deemed to be an employee of
13 Academy.”

14 15 III. ARGUMENT

16 1. Statute of Limitations

17 The party seeking arbitration must petition to compel it within four years after the other
18 party has refused to arbitrate. An action to compel arbitration is in essence a suit in equity to
19 compel specific performance of a contract. The contract is considered breached, and thus the
20 cause of action accrues, when the other party refuses to comply with a demand to arbitrate
21 [Wagner Constr. Co. v. Pac. Mech. Corp. (2007) 41 Cal. 4th 19, 29, 58 Cal. Rptr. 3d 434, 157
22 P.3d 1029 (distinguishing limitations defense on underlying claim, which is for arbitrator to
23 decide); Spear v. Cal. State Auto. Ass'n (1992) 2 Cal. 4th 1035, 1040–1043, 9 Cal. Rptr. 2d 381,
24 831 P.2d 821].

25 The four-year limitation of Code Civ. Proc. § 337(a), applicable to breach of contract,
26 applies to require the petition to compel arbitration to be filed within four years from the refusal
27 to arbitrate [Spear v. Cal. State Auto. Ass'n (1992) 2 Cal. 4th 1035, 1040, 9 Cal. Rptr. 2d 381,
28 831 P.2d 821].

This action was filed in this court on 07/06/2022. The Motion to Compel Arbitration is
filed on 10/14/2022, thus this motion is timely.

1 2. The arbitration agreement is properly authenticated

2 For purposes of a petition to compel arbitration, it is not necessary to follow the normal
3 procedures of document authentication (see *Condee v. Longwood Management Corp.*, 88 Cal.
4 App. 4th 215). "The court shall order the petitioner and the respondent to arbitrate the controversy
5 if it determines that an agreement to arbitrate the controversy exists. . . ." (§ 1281.2). The statute
6 does not require the petitioner to introduce the agreement into evidence.

7 A plain reading of the statute indicates that as a preliminary matter the court is only
8 required to make a finding of the agreement's existence, not an evidentiary determination of its
9 validity. This conclusion is bolstered by California Rules of Court, rule 371. A petitioner must
10 attach a copy of the agreement to the petition, or its "provisions . . . shall be set forth" in the
11 petition. (Cal. Rules of Court, rule 371.) As with section 1281.2, what the rule does not say is
12 significant. (See *Grupe Development Co. v. Superior Court* (1993) 4 Cal. 4th 911, 921 [16 Cal.
Rptr. 2d 226, 844 P.2d 545].

13 Rule 371 does not require the petitioner to introduce the agreement into evidence or
14 provide the court with anything more than a copy or recitation of its terms. Petitioner need only
15 allege the existence of an agreement and support the allegation as provided in rule 371. Here
16 arbitration agreement is cited and attached to the Motion to compel arbitration.

17 3. This Honorable Court has power to compel arbitration

18 A petition to compel arbitration is a suit in equity seeking specific performance of that
19 contract [*Wagner Constr. Co. v. Pac. Mech. Corp.* (2007) 41 Cal. 4th 19, 29, 58 Cal. Rptr. 3d 434,
20 157 P.3d 1029].

21 Code Civ. Proc. § 1281.2 prescribes and limits the power of the superior court in passing
22 on a petition to compel arbitration. The clear purpose and effect of that section is to require the
23 court to determine in advance whether there is a duty to arbitrate the controversy that has arisen.
24 [*Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal. 3d 473, 479–480, 121 Cal. Rptr. 477,
25 535 P.2d 341].

26 Judicial review is strictly limited to a determination of whether the party resisting
27 arbitration in fact agreed to arbitrate [*State Farm Mut. Auto Ins. Co. v. Superior Court* (1994) 23
28 Cal. App. 4th 1297, 1301, 28 Cal. Rptr. 2d 711]. Doubts as to whether an arbitration clause
applies to a particular dispute are to be resolved in favor of sending the parties to arbitration
[*Serv. Emps. Int'l Union v. City of L.A.* (1994) 24 Cal. App. 4th 136, 143, 29 Cal. Rptr. 2d 357].
For further discussion, see § 32.24[2].

1 If the court determines that a written agreement to arbitrate a controversy exists, an order
2 to arbitrate the controversy may not be refused on the ground that the petitioner’s contentions lack
3 substantive merit and court has the necessary power to compel arbitration [Valsan Partners Ltd.
4 P’ship v. Calcor Space Facility, Inc. (1994) 25 Cal. App. 4th 809, 817, 30 Cal. Rptr. 2d 785].

5
6 4. Defendant has standing to compel arbitration

7 To have standing to petition to compel arbitration, a petitioner must have an actual and
8 substantial interest in the subject matter of the action, and stand to be benefited or injured by a
9 judgment in the action [Cohen v. TNP 2008 Participating Notes Program, LLC (2019) 31 Cal.
10 App. 5th 840, 855, 243 Cal. Rptr. 3d 340 (signatory who invested in program had interest
11 sufficient to confer standing to petition to compel arbitration)].

12 Here the defendant is the signatory of the arbitration agreement and has an actual and
13 substantial interest in the subject matter of this action, thus the Defendant has the necessary
14 standing to compel arbitration.

15
16 5. Plaintiffs' Claims are Subject to Arbitration

17 An arbitration provision stating that the parties “agree to arbitrate all disputes, claims and
18 controversies arising out of or relating to ... the interpretation, validity, or enforceability of this
19 Agreement, including the determination of the scope or applicability of this Section 5 [the
20 “Arbitration of Disputes” section]” clearly delegated arbitrability to the arbitrator. Aanderud v.
21 Superior Court (2017) 13 Cal. App. 5th 880, 892, 221 Cal. Rptr. 3d 225. Court is to grant order
22 directing arbitration unless arbitration clause is not susceptible of interpretation that covers
23 dispute. Charles J. Rounds Co. v. Jt. Council of Teamsters No. 42 (1971) 4 Cal. 3d 888, 892, 95
24 Cal. Rptr. 53, 484 P.2d 1397; Morris v. Zukerman (1967) 257 Cal. App. 2d 91, 96, 64 Cal. Rptr.
25 714

26 Here, the arbitration provisions in the Agreement for training services expressly call
27 parties to resolve "all disputes" between them without exceptions through a binding arbitration,
28 with exception for an injunctive relief. The language of the arbitration clause is sufficient to show
mutual intent of the parties to willfully and knowingly waive their rights to a judicial forum (see
Zoller v. GCA Advisors, LLC (9th Cir. 2021) 993 F.3d 1198, 1202), except for the injunctive
relief.

1
2 6. Any Challenges to the Validity or Enforceability of the Arbitration Agreement Must
3 Be Referred to the Arbitrator.

4
5 In Aanderud, the any challenge Plaintiff may assert to the validity or enforceability of
6 their agreement to arbitrate must be submitted to the arbitrator according to the express terms of
7 the Performer Contracts. An arbitration provision stating that the parties “agree to arbitrate all
8 disputes, claims and controversies arising out of or relating to ... the interpretation, validity, or
9 enforceability of this Agreement, including the determination of the scope or applicability of this
10 Section 5 [the “Arbitration of Disputes” section]” clearly delegated arbitrability to the arbitrator.
(Aanderud v. Superior Court (2017) 13 Cal. App. 5th 880, 892, 221 Cal. Rptr. 3d 225)

11 In Zhang court stated that there is no dispute over the applicable principles of law on
12 questions of arbitrability. ““Under California law, it is presumed the judge will decide
13 arbitrability, unless there is clear and unmistakable evidence the parties intended the arbitrator to
14 decide arbitrability.”” (Nelson v. Dual Diagnosis Treatment Center, Inc. (2022) 77 Cal.App.5th
15 643, 654 [292 Cal. Rptr. 3d 740] (Nelson).) Federal law is the same. (Henry Schein, Inc. v.
16 Archer & White Sales, Inc. (2019) 586 U.S. [202 L. Ed. 2d 480, 139 S.Ct. 524, 530]; *ibid.* [“But
17 if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a
18 court may not decide the arbitrability issue.”].) (Zhang v. Superior Court (2022) 85 Cal.App.5th
167 [301 Cal.Rptr.3d 164].)

19 Here, arbitration clause expressly reserves resolution of all unresolved claims or disputes
20 including the interpretation and scope of this Arbitration Provision, and the arbitrability of the
21 claim or dispute to the arbitrator.

22
23
24 7. General Applicable Law Regarding Binding Arbitration.

25
26 In general, arbitration is strongly favored as a matter of public policy. *Izzi v. Mesquite*
27 *Country Club*, 186 Cal.App.3d 1309 (1986). Arbitration agreements are to be liberally construed
28 in favor of enforcement. *Coopers & Lybrand v. Superior Court*, 212 Cal.App.3d 530 (1986). This
policy favoring arbitration is incorporated by inference into all contracts that contain arbitration
clauses.

1 Freeman v. State Farm Mut. Auto, 14 Cal. 3d 473 (1975). Any doubts as to construction should
2 be resolved in favor of arbitration. Moses H Cone-Mem. Hosp. v. Mercury Constr. Corp., 460
3 U.S. 1 (1975). The right of a party to bring a motion or petition to compel arbitration is set forth
4 in California Code of Civil Procedure section 1281 et. seq.

5
6 8. It is Plaintiff's Burden to Establish that the Arbitration Agreement is Unenforceable.

7
8 Plaintiffs bear the burden of establishing that the arbitration agreement is invalid. See
9 Crippen v. Central Valley R V Outlet, Inc., 124 Cal. App. 4th 1159, 1165 (2004). The party
10 asserting unconscionability bears the burden of proof because it is a contract defense. Sanchez v.
11 Valencia Holding Co., LLC, 61 Cal. 4th 899, 910 (2015). Thus, "[t]he burden is on [Plaintiffs], as
12 the party challenging the arbitration agreement, to prove both procedural and substantive
13 unconscionability. " Serafin v. Balco Properties Ltd., LLC, 235 Cal.App.4th 165, 178 (2015)
(review denied June 10, 2015) (emphasis added).

14
15 A. Plaintiff Erroneously Claims That the Arbitration Agreement is Procedurally
16 Unconscionable Because Its Terms Are Contradictory.

17 Plaintiff claims that the terms of the agreement are mutually exclusive and contradictory
18 which results in procedural unconscionability. In fact, however, Plaintiff is twisting the terms of
19 the agreement intentionally misrepresenting it to the court. The Arbitration clause states that
20 "Notwithstanding this agreement to arbitrate, neither party shall be precluded from seeking
injunctive relief in a judicial forum."

21 That is, parties are not waiving its rights to litigate injunctive relief in a judicial forum that
22 is described in the agreement in the section "Governing Law/Venue" as "courts of Los Angeles
23 County, California". There is no inconsistency here, considering that the governing law of this
24 agreement is mutually elected as "the state of California".

25 The language of the agreement is clear and consistent with the intent of the parties to be
26 governed by the California law, to resolve all disputed by biding arbitration except injunctive
27 relief issues that should be litigated in the court of Los Angeles County, California. Designation
28 of a specific venue to litigate injunctive relief is a proper procedural instruction for both parties
signing the agreement. There is no procedural unconscionability here.

9. The Arbitration Provisions are Not Procedurally Unconscionable

1
2 Procedural unconscionability focuses on the circumstances surrounding the negotiation of
3 the contract. *Gatton v. T-Mobile USA, Inc.*, 152 Cal. App. 4th 571 , 581 (2007). Specifically,
4 procedural unconscionability can arise from oppression or surprise. *Armendariz v. Foundation*
5 *Health Psychcare Services, Inc.* 24 Cal. 4th 83, 1 14 (2000). "Oppression arises from an inequality
6 of bargaining power which results in no real negotiation and an absence of meaningful choice.
7 *Bruni v. 7 Didion*, 1 60 Cal. App. 4th 1 272, 1288 (2008) [internal quotations omitted].
8 "Surprise involves the extent to which the supposedly agreed-upon terms of the bargain are
9 hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." (Id.)
10 Defendant did not engage in the type of "surprise or sharp practices" seen in instances where
11 procedural unconscionability is found. See *Baltazar v. Forever 21, Inc.* , 62 Cal .4th 1 237, 1 2 1
12 245 (201 6) .

13 Under the circumstances of this particular case, there can be no dispute that Plaintiff
14 voluntarily executed this agreement, in which each party agreed to all terms including the binding
15 arbitration provision. In sum, there is no indicia of procedural unconscionability.

16 10. The Arbitration Provisions Are Not Substantively Unconscionable

17 A. Plaintiff's Erroneously Argues That This Agreement To Arbitrate is Substantively 18 Unconscionable

19
20 Plaintiff's erroneously argues that this agreement to arbitrate is substantively
21 unconscionable because it fails to meet the following minimum requirements: 1) there is a neutral
22 arbitrator; 2) the remedies available are not to be limited; 3) the parties are given the opportunity
23 to conduct adequate discovery; 4) the arbitrator is required to issue a written arbitration award
24 setting forth the essential finding and conclusions on which the arbitrator based the award; and 5)
25 the employee is not required to bear any type of expense the employee would not be required to
26 bear if the action were brought in court. (See *Armendariz* 24 Cal.4th at 111.)

27 Plaintiff is further arguing that the requirement for neutral arbitrators is satisfied by
28 incorporation of the AAA rules. Yet, Plaintiff refuses to incorporate AAA rule in regard to any
other requirements, suggesting that the grammatic construction of the arbitration clause does not
apply the American Arbitration Association's National Rules to any other provisions.

1 This is incorrect. In fact, arbitration clause is phrased in all-inclusive mode, incorporation
2 rules of AAA to the entire provision of binding arbitration.

3
4 B. Incorporation of AAA rules satisfied Armendariz’ analyses:

5 The Agreement provides that the rules of the American Arbitration Association (“AAA”)
6 will apply to the arbitration of this matter. Specifically, AAA’s Employment Arbitration Rules
7 state that “[t]he parties shall be deemed to have made these rules a part of their arbitration
8 agreement whenever they have provided for arbitration . . . by the AAA of an employment dispute
9 without specifying particular rules.” (AAA Employment Arbitration Rules (“AAA Employment
10 Rules”) Rule 1, “Applicable Rules of Arbitration,” [https://www.adr.org/sites/default/files/Employment-
11 Rules-Web.pdf](https://www.adr.org/sites/default/files/Employment-Rules-Web.pdf).)

12 In so specifying AAA as an arbitrator, the Agreement between the Parties designates a
13 qualified and well-respected alternative dispute forum to ensure essential elements of fairness
14 under Armendariz.

15 First, both, the agreement signed by the parties and AAA provides qualified neutral
16 arbitrators. (AAA Employment Rule 12, “Number, Qualifications and Appointment of Neutral
17 Arbitrators”). Therefore, no one may be an arbitrator in any matter where they have a financial or
18 personal interest in the result. (See also AAA Employment Rules 15 (“Disclosure”) and 16
19 (“Disqualification”) governing the avoidance of bias or impartiality.)

20 Second, AAA Employment rules provides that the Parties are entitled to “any remedy or
21 relief that would have been available to the parties had the matter been heard in court, including
22 awards of attorney’s fees and costs, in accordance with applicable law.” AAA Employment Rule
23 39(d).

24 Third, the Agreement, under AAA Employment Rules, provides for more than adequate
25 discovery procedures for gathering relevant evidence and testimony, as such forum provides
26 mechanisms for initial disclosures, interrogatories, requests for production and depositions.
27 Specifically, AAA Employment Rules provide: “The arbitrator shall have the authority to order
28 such discovery, by way of deposition interrogatory, document production or otherwise as the
arbitrator considers necessary to the full and fair exploration of the issues in dispute, consistent
with the expedited nature of arbitration. (AAA Employment Arbitration Rule 9, “Discovery,”
[emphasis added].) As Armendariz only requires “discovery sufficient to adequately arbitrate . . .
statutory claim[s], including access to essential documents and witnesses, as determined by the
arbitrator(s)”, the Agreement’s provisions are sufficient. (Id., 24 Cal.4th at 106.)

1 Fourth, the Agreement, under AAA Employment Rules, will allow the arbitrator’s award
2 “to be in writing and signed by a majority of the arbitrators and shall provide the written reasons
3 for the award unless the parties agree otherwise. It shall be executed in the manner required by
4 law.” AAA Employment Rule 39(c).

5 Finally, in regard to the expenses that the employee may be required to bear, Section of 39
6 of AAA Rules indicates that “... Unless otherwise agreed by the parties, the expenses of
7 witnesses for either side shall be borne by the party producing such witnesses. All expenses of the
8 arbitration, including required travel and other expenses of the arbitrator, AAA representatives,
9 and any witness and the costs relating to any proof produced at the direction of the arbitrator,
10 shall be borne by the employer,

11 This is consistent with the rules of Court, where Employee is paying its cos of the
12 litigation including but not limited to the filing fees, witness fees. This is in complete compliance
13 with the (See Armendariz 24 Cal.4th at 111.)

14 C. The agreement is not substantively unconscionable because it does not impair the
15 integrity of the bargaining process.

16 Citing numerous cases, Kho well defined substantive unconscionability indicating that
17 substantive unconscionability examines the fairness of a contract's terms. This analysis “ensures
18 that contracts, particularly contracts of adhesion, do not impose terms that have been variously
19 described as ““overly harsh”” (Stirlen v. Supercuts, Inc. (1997) 51 Cal.App.4th 1519, 1532 [60
20 Cal. Rptr. 2d 138]), ““unduly oppressive”” (Perdue v. Crocker National Bank (1985) 38 Cal.3d
21 913, 925 [216 Cal. Rptr. 345, 702 P.2d 503] ...), ““so one-sided as to ‘shock the conscience’”
22 (Pinnacle[, supra,] 55 Cal.4th [at p.] 246 ...), or ‘unfairly one-sided’ (Little[v. Auto Stiegler, Inc.
23 (2003)] 29 Cal.4th [1064,] 1071 [130 Cal. Rptr. 2d 892, 63 P.3d 979].)

24 All of these formulations point to the central idea that the unconscionability doctrine is
25 concerned not with ‘a simple old-fashioned bad bargain’ [citation], but with terms that are
26 ‘unreasonably favorable to the more powerful party.’” (Sonic II, supra, 57 Cal.4th at p. 1145.)
27 Unconscionable terms ““impair the integrity of the bargaining process or otherwise contravene the
28 public interest or public policy”” or attempt to impermissibly alter fundamental legal duties.
(Ibid.) They may include fine-print terms, unreasonably or unexpectedly harsh terms regarding
price or other central aspects of the transaction, and terms that undermine the nondrafting party's
reasonable expectations. (Ibid.; see Sanchez, supra, 61 Cal.4th at p. 911.) (Kho, supra, 8 Cal.5th at
pp. 129–130.)

1 To be substantively unconscionable, a contract must produce overly harsh or one-sided
2 results. *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal .4th 1109, 1133 (2013). "A contract term is not
3 substantively unconscionable when it merely gives one side a greater benefit; rather, the term
4 must be so one-sided as to shock the conscience." *Pinnacle Museum Tower Assn. v.*
5 *PinnacleMarket Development (US), LLC*, 55 Cal .4th 223, 246 (2012).

6 Here Plaintiff cannot demonstrate the arbitration provision in arbitration agreement is one-
7 sided, let alone that it is "so one-sided as to shock the conscience." To the contrary, the arbitration
8 provision requires the parties to agree upon a neutral arbitrator. There is no indication that
9 Plaintiff did not have any bargaining power over the contract, including but not limited to the
10 arbitration provision, in fact, arbitration provision benefits both sides.

11 D. Application of Armendariz should be approached with cautions

12 Even though Armendariz is a good guiding law, however it's Application should be
13 considered on a case-by-case basis. In Farrar court noted that Armendariz' analyses is not
14 applicable when the arbitration provision at issue here is not limited to employee wrongful
15 termination claims, as in Armendariz (*Farrar v. Direct Commerce, Inc.*, 9 Cal. App. 5th 1257, 215
16 Cal. Rptr. 3d 785, 2017 Cal. App. LEXIS 262, 2017 WL 10904830

17 In Parada and Giuliano courts did not apply Armendariz stating that Armendariz does not
18 apply when case does not arise under the FEHA (*Parada v. Superior Court*, 176 Cal. App. 4th
19 1554, 98 Cal. Rptr. 3d 743, 2009 Cal. App. LEXIS 14160; *Giuliano v. Inland Empire Personnel,*
20 *Inc.*, 149 Cal. App. 4th 1276, 58 Cal. Rptr. 3d 5, 2007 Cal. App. LEXIS 611, 2007 Cal. Daily Op.
21 Service 4278, 2007 D.A.R. 5413, 154 Lab. Cas. (CCH) P60400).

22 In Gutierrez court refused to adopt the Armendariz categorical approach that would shift
23 all unique arbitral costs to the nonconsumer party indicating that the determination that arbitral
24 fees in consumer cases are unreasonable should be made on a case-by-case basis (*Gutierrez v.*
25 *Autowest, Inc.*, 114 Cal. App. 4th 77, 7 Cal. Rptr. 3d 267, 2003 Cal. App. LEXIS 1817, 2003 Cal.
26 Daily Op. Service 10633, 2003 D.A.R. 13405).

27 11. The Parties Entered Into a Valid Agreement to Arbitrate

28 For the "validity" inquiry, courts generally apply ordinary state law contract principles.
Pinnacle Museum Tower Assn., 55 Cal.4th at 236 (general contract law principles determine
whether arbitration agreement binding); *Harris*, 248 Cal. App. 4th at 381. Under California law, a
contract is valid if there is mutual assent between the parties and valid consideration. *Craig v.*

1 Brown & Root, Inc., 84 Cal. App. 4th 416, 420 (2000); Div. of Labor Law Enforcement v.
2 Transpacific Trans. Co., 69 Cal. App. 3d 268, 274-75 (1977) (mutual assent and considerations as
3 the elements of a valid contract).

4 The Arbitration clause of the Agreement meets these requirements. There is mutual assent
5 between the parties to arbitrate all controversies. The plain language of the Arbitration clause
6 makes clear that both parties agree to arbitrate all disputes relating to the underlying Agreement.

7 12. The Agreement is Enforceable

8
9 Any Argument that the Arbitration Provision of the Agreement is Unenforceable Pursuant
10 to Armendariz is Meritless. Plaintiff may challenge the validity of the Agreement under
11 California law by arguing that it does not satisfy the additional requirements identified in
12 Armendariz v. Found. Health Psychcare Servs., Inc., 24 Cal.4th 83, 90 (2000). Any such
13 challenge is rnerit-less because (1) Plaintiff was not an employee and Armendariz only applies to
14 agreements that are mandatory conditions of employment, (2) Armendariz is no longer good law,
15 and (3) even if it is and were found to apply here, the Arbitration Agreement complies with
16 Armendariz.

17 Under both federal and California law, arbitration agreements are valid and enforceable,
18 unless they are revocable for reasons under state law that would render any contract revocable,
19 such as the contract defenses of fraud, duress, or unconscionability. (Gostev v. Skillz Platform,
20 Inc. (Feb. 28, 2023, No. A164407) Cal.App.5th [2023 Cal. App. LEXIS 139].)

21 13. The Entire Litigation Must Be Dismissed, or in the Alternative, Stayed Pending the 22 Completion of Arbitration

23
24 California law fully supports a trial court's power to dismiss, rather than stay, a case in
25 which the parties have an agreement to arbitrate. See Charles J Rounds Co. v. Joint Council of
26 Teamsters No. 42, 4 Cal.3d 888, 890, 894, 900 (1971) (upholding trial court's dismissal of a
27 complaint on the ground the dispute in the lawsuit was covered by an arbitration clause).
28 Here, Plaintiff agreed to binding arbitration and each of his claims fall within the scope of the
arbitration clause of the Agreement. Because all of the claims for relief asserted in his lawsuit fall
within the scope of the arbitration clause of the Agreement, the Court should dismiss Plaintiffs
action in its entirety.

1 In the alternative, if the Court declines to dismiss the case, Defendant seeks an order
2 staying this action. A stay is required under California Code of Civil Procedure section 1281.4,
3 which provides, in relevant part:

4 If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of
5 a controversy which is an issue involved in an action or proceeding pending before a court of this
6 State, the court in which such action or proceeding is pending shall, upon motion of a party to
7 such action or proceeding, stay the action or proceeding until an arbitration is had in accordance
8 with the order to arbitrate or until such earlier time as the court specifies.

9 "The purpose of the statutory stay is to protect the jurisdiction of the arbitrator by
10 preserving the status quo until arbitration is resolved ... In the absence of a stay, the continuation
11 of the proceedings in the trial court disrupts the arbitration proceedings and can render them
12 ineffective." Fed. Ins. Co. v. Superior Court, 60 Cal. App. 4th 1370, 1374-75 (1998)

13 IV. CONCLUSION

14 For all of the foregoing reasons, Defendant respectfully requests that the Court grant its
15 Motion to Compel Arbitration, order that Plaintiff arbitrate his claims, and dismiss, or in the
16 alternative, stay, this action.

17
18
19 Respectfully Submitted

20 Dated: 03/19/2023

21 Law Offices of Natalia Foley



22 _____
23 By Natalia Foley, Esq (SBN 295923)

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Exhibit 01

AGREEMENT FOR TRAINING SERVICES

1. PARTIES:

This training Services agreement ("Agreement") is made by and between 5 Star K-9 Academy - Royal Dog Academy (hereinafter - "Academy"), and:

First and Last Name:

DYLAN YEISER-FODNESS

Contact Address:

1147 5TH STREET
MANHATTAN BEACH, CA, 90266

Phone Number:

(310) 489-6631

Email:

dylan.fodness@gmail.com

California DL:

F5234316

(Hereinafter - "Student" or "You").

2. EFFECTIVE DATE:

This Agreement shall be effective as
of

8 (day)

10 (month)

2020 (year)

3. CONTENT OF THE AGREEMENT:

- A This Agreement is a legal agreement between you and Academy.
- B We suggest you keep a copy of this Agreement for your records
- C This Agreement states the terms and conditions that apply to all training services provided by Academy.

D "You" and "your" as used in this Agreement shall mean you individually and/or the entity on whose behalf you are obtaining training services.

E CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE ACCEPTING THEM BY SIGNING THIS AGREEMENT

4. TERMS OF THE AGREEMENT:

You hereby acknowledge and agree to the following:

- A. **Training Services.** Upon your payment of the training fees and your acceptance of this Agreement, Academy shall register you for the training for which you have selected. You are prohibited from audio or video recording any Academy provided trainings and may not permit a third party to record any Academy provided trainings.
- B. **Requirements.** You must obtain the prerequisite Academy educational materials, books, other instructional materials, necessary for training clothing, equipment and other supply at your own expenses, in compliance with the instructions provided by the trainer of each course taken at the Academy.
- C. **Confidential Information.** You agree not to use or otherwise disclose to any third party, without Academy's prior written consent, any Confidential Information learned under this Agreement, including through the training sessions.)
- D. **Training Materials.** Student agrees and acknowledges that Student is not obtaining any intellectual property right in or to any training materials provided by Academy to Student in connection with the provision to Student of Training Services ("Training Materials"), other than the rights of use specifically granted in this Agreement. Student will be entitled to keep and use all Training Materials provided by Academy to Student, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Academy. In particular and without limitation, Training Materials may not be modified including translated, re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. During the term of this Agreement, Student may copy the Training Materials for its internal use. All Academy trademarks, trade names, logos and notices present on the Training Materials will be preserved.

- E. **Governing Law; Venue.** This Agreement and any disputes that may arise under, out of or in connection with this Agreement, shall be governed by and construed and enforced in accordance with the laws of the State of California, and shall be binding on the parties to this Agreement in the United States and worldwide. The parties consent and submit to the jurisdiction of and venue in the courts of Los Angeles County, California. Each party waives all defenses of lack of personal jurisdiction and forum non convenienc. English is the governing language of this Agreement.
- F. **Indemnification.** You will defend Academy against any claim or action brought by a third party against Academy arising from your violation of any such third party's privacy rights of the data you provide to Academy under this Agreement. You will pay those costs and damages finally awarded against Academy in any such claim or action (including reasonable attorneys' fees) that are specifically attributable to such claim or action, or those costs and damages agreed to in a monetary settlement of such claim or action. You shall have the right to settle those aspects of the claim or action dealing only with the payment of money, if it pays such amounts as part of the settlement or entry of judgment. Notwithstanding the preceding sentence, in connection with such defense or settlement, you may not enter into any agreement involving injunctive relief or imposition of any other obligation upon Academy without Academy's prior written consent.
- G. **Limitation of Liability.** EXCEPT FOR LIABILITY ARISING UNDER SECTIONS A,B,C,D ABOVE, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES (WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS). THIS EXCLUSION OF DAMAGES APPLIES EVEN IF THE DEFENDING PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND HOWEVER THE DAMAGES HAVE ARISEN (WHETHER OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR SERVICES; OR ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR EXPRESS OR IMPLIED WARRANTY UNDER THIS AGREEMENT OR ANY THEORY OF LAW SUCH AS MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT).
- H. **Limitation of Financial Liability.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ACADEMY'S ENTIRE LIABILITY ARISING OUT OF THIS AGREEMENT WILL IN NO EVENT EXCEED THE FEES PAID BY YOU TO ACADEMY FOR THE TRAINING SERVICES, WHETHER OR NOT THE ACTION OR CLAIM IS BASED IN CONTRACT, MISREPRESENTATION, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY.

- I. **Equitable Relief; Attorney's Fees.** The parties agree that the remedy of damages at law for a violation of any of the terms or conditions of this Agreement is an inadequate remedy. In recognition of the irreparable harm that such a violation would cause, the parties agree that in addition to any other remedies or relief afforded by law, any party may obtain an injunction relief without the need to post any bond or other security, it being the understanding of the parties that both damages and an injunction or order of specific performance shall be proper modes of relief and are not to be considered alternative remedies. In the event that any equitable relief action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.
- J. **Dispute Resolution and Arbitration clause.** Parties agree to use their best efforts to resolve any relevant to this agreement issues amicably in good faith and fair dealing through negotiation. If unresolved, any claim or dispute, whether in contract, tort, statute, Labor Code, employment law or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute) between both parties or their employees, agents, successors or assigns, which arises out of or is related to this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall be resolved by neutral, binding arbitration and not by a court action. Binding arbitration shall be held before a single arbitrator in Los Angeles, California in accordance with the American Arbitration Association's National Rules. Notwithstanding this agreement to arbitrate, neither party shall be precluded from seeking injunctive relief in a judicial forum.
- K. **Insurance.** In the event that Academy, its employees, agents or subcontractors enter premises occupied by or under the control of Academy in the performance of the Agreement, Academy agrees that it will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above.

5. COST AND ENROLLMENT

You will be able to complete the following courses:

			Enrolled Date:
A.	Basic course Dog Training Course	50 hours	\$5,000.00
B.	K-9 training course	50 hours	\$5,000.00

- | | | | |
|----|------------------------------|----------|------------|
| C. | Professional Dog Training | 50 hours | \$5,000.00 |
| D. | Advanced Master Dog Training | 60 hours | \$5,000.00 |

6. TUITION PAYMENT

- A Student will pay to Academy the fees and other compensation set forth in each Order Form. Student will also reimburse Academy for all reasonable out-of-pocket travel and living expenses incurred in the provision of the Services, and any other reimbursable items set forth in each Order Form.
- B All invoices will be paid within thirty (30) days from the date of the invoice. All payments are nonrefundable and made without the right of setoff or chargeback. Student will pay interest, at a rate equal to one percent (1%) per month on any undisputed amount that remains unpaid thirty (30) days after the date of the invoice. If Student fails to pay fees in accordance with this Section, Academy may suspend fulfilling its obligations under this Agreement until such payment is received by Academy.
- C Student will pay directly any taxes arising out of this Agreement or Academy's performance under this Agreement, including applicable local, state, federal and international sales taxes, value added taxes, withholding taxes, and any other taxes or duties of any kind, but excluding taxes on Academy's net income and all employer reporting and payment obligations with respect to Academy's personnel.
- D If any applicable law requires Student to withhold amounts from any payments to Academy under this Agreement, (a) Student will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Academy with tax receipts evidencing the payments of such amounts and (b) the sum payable by Student upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Academy receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Academy would have received and retained absent the required deduction or withholding.

7. EDUCATIONAL LOAN AND WORK FOR STUDY PROGRAM

- A. Academy's fees for completion of the Training shall be invoiced to the students upon registration for the course. All invoices for the training rendered are payable to Academy in advance, at least thirty (30) days before the beginning of the Training, upon receipt of invoice.

- B. Academy, at its own discretion, can offer student an option of tuition payment in a ways of (a) loan or (b) work to study program.
- C. Payment for the Training shall not be unreasonably withheld or delayed. If payment is past due for over 30 (thirty) days, the Academy has right to enforce unpaid tuition by filing a lawsuit in the Superior court of California, Los Angeles County. Past due amounts shall be subject to an interest charge of one percent (1%) per month or the highest rate authorized by law.
- D. If student accepts Tuition Loan via Work-To-Study program, the Master Promissory Note should be attached to this agreement, **subject to terms of this agreement**, as Exhibit 1.
- E. Student accepts Tuition Loan via Work-To-Study Program:
 Yes
 No
- F. Master Promissory Note (MPN) for Tuition Loan via Work-To-Study Program is attached:
 Yes
 No

8. MISCELLANEOUS

- A. **Relationship of the Parties.** For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Academy is an independent contractor and is not an employer, partner, joint venturer, or agent of Student. Academy is hired by Student to provide triaging services to the student. As an independent contractor, Academy is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance.
- B. **No Employee Relationship.** Academy's employees are not and will not be deemed to be employees of Student. Student is not and will not be deemed to be an employee of Academy.
- C. **Subcontractors.** Academy may engage third parties to furnish services in connection with the Services, provided that such third parties have executed appropriate confidentiality agreements with Academy. In addition, Services may be performed by Affiliates of Academy. No engagement of a subcontractor will relieve Academy from any of its obligations under this Agreement.

D **TERM AND TERMINATION.** The term of this Agreement will commence on the Effective Date and will remain and continue in effect, unless sooner terminated as provided under this Agreement. This Agreement may be terminated in whole or in part by each party (the "Non-Breaching Party") upon written notice to the other party if any of the following events occur by or with respect to such other party (the "Breaching Party"): (i) the Breaching Party commits a material breach of any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of notice to do so; or (ii) any insolvency of the Breaching Party, any filing of a petition in bankruptcy by or against the Breaching Party, any appointment of a receiver for the Breaching Party, or any assignment for the benefit of the Breaching Party's creditors. Upon termination, Academy will be entitled to recover payment for all Services and related expenses rendered through the date of termination, including for work in progress.

E **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. Purchase orders shall be for the sole purpose of defining quantities, prices and describing the Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. In the event of a conflict between the terms of this Agreement and an Order Form, the terms of the Order Form will govern for that Order Form only. A statement of work signed by Academy and Student and incorporating this Agreement may serve as an Order Form under this Agreement.

F **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

G **Waiver.** No waiver of rights by either party may be implied from any actions or failures to enforce rights under this Agreement.

H **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (excluding payment of monies due).

I **No Third Party Beneficiaries.** Unless otherwise specifically stated, the terms of this Agreement are intended to be and are solely for the benefit of Academy and Student and do not create any right in favor of any third party.

G **Notices.** All notices must be in writing and shall be effective three (3) days after the date sent to the other party's headquarters as shown on the Order Form, Attention Legal Department.

9. ACCEPTANCE:

The parties acknowledge and confirm that they have read and approved the terms and conditions set forth in this Agreement, as deemed by the signatures below.

STUDENT:
DYLAN YEISER-FODNESS

ACADEMY:
Maxim Basyro

BY:


BY:


Dated:
10/8/2020

Dated:
10/8/2020

Exhibit I:

Master Promissory Note for Tuition Loan via
Work-To-Study Program.
Subject to the terms of AGREEMENT FOR
TRAINING SERVICES

dated: 10/8/2020

**MASTER PROMISSORY NOTE
(MPN)
DIRECT PRIVATE TUITION LOAN
AND WORK-TO-STUDY RDA PROGRAM**

This is Master promissory Note signed by the Student to acknowledge terms of the following tuition loan in work-to-study program:

PART I.

Creditor:

Borrower:

Amount: \$3500

Course to be paid for:

Terms of repayment: Cash within 30 days for completion of the above course.

Interest: If the unpaid amount of the loan is past due for over 30 days, the 10% yearly interest should apply to unpaid portion of the loan.

Work to study option: This loan is forgiven if the student fully completes "Work to study" RDA program for at least 2 years ~~hours.~~

Breach: If student signs up for RDA "work to study" program, but quit the program before the stated about number of work-to-study hours is completed, the student loan deemed to be in default, and student in in breach of this Tuition Loan agreement, and is responsible to the remainder of unpaid tuition immediately upon the occurrence of the breach.

PART II:

BORROWER INFORMATION:

Name and Permanent Address

DYLAN YEISER-FODNESS
1147 5TH ST MANHATTAN BEACH, CA, 90266

Social Security Number

609-98-7150

Date of Birth

06/27/1997

Driver's License State and

Number CALIFORNIA

FS234316

Area Code/Telephone Number

(310) 489-6631

REFERENCE INFORMATION:

List two persons with different U.S. addresses who have known you for at least three years.

Person 1 ANDREA YEISER

Person 2 CHRIS ELLIOTT

BORROWER REQUEST, CERTIFICATIONS, AUTHORIZATIONS, AND UNDERSTANDINGS

- A This is a Master Promissory Note (MPN) for one RDA TUITION Loan in the amount of \$3500.
- B Within 5 days of acceptance of this loan, or from the beginning of the program, whichever comes first, I may cancel a loan by refusing to accept it or returning all or a portion of a loan disbursement that is made to me.
- C Under penalty of perjury, I certify that the information I have provided on this MPN and as updated by me from time to time is true, complete, and correct to the best of my knowledge and belief and is provided in good faith

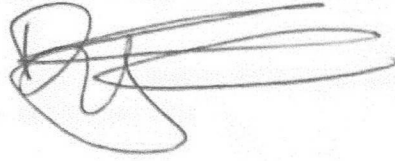
- D I understand that RDA will give me the opportunity to pay the loan via RDA WORK-TO-STUDY program
- E I understand and agree to work as an independent contractor of RDA for 2 years hours in order to re-pay this tuition loan.
- F I understand and agree that if I stop working for RDA under the WORK-TO-STUDY program before expiration of 2 years hours, I will be responsible for the unpaid portion of my tuition loan.

PART III

PROMISE TO PAY

- A I promise to pay to RDA Tuition loan amounts, plus interest and other charges and fees that may become due as provided in this MPN either in cash or via RDA WORK-TO-STUDY program.
- B I understand that more than one loan may be made to me under this MPN.
- C I understand that by accepting any disbursement issued at any time under this MPN, I agree to repay the loan associated with that disbursement.
- D If I do not make a payment on a loan made under this MPN when it is due, I will also pay reasonable collection costs, including but not limited to attorney fees, court costs, and other fees.
- E I will not sign this MPN before reading the entire MPN, even if I am told not to read it, or told that I am not required to read it.
- F I am entitled to an exact copy of this MPN
- G My signature certifies that I have read, understand, and agree to the terms and conditions of this MPN
- H I UNDERSTAND THAT I MAY RECEIVE ONE OR MORE LOANS UNDER THIS MPN, AND THAT I MUST REPAY ALL LOANS THAT I RECEIVE UNDER THIS MPN.

Borrower's Signature:



(signature)

10/8/2020

(date)

TUITION PAYMENT INVOICE # _____

Dated: " _____ " _____ 2018

FROM:

TO:

ROYAL DOG ACADEMY

(address and contact info)

(student name and address)

Student Name: DYLAN YEISER-FODNESS

Course Title:

Date of Enrollment: 10/8/2020

Tuition Due:

Loan Issued: \$ 3500

Work-To-Study Hours to re-
pay:

Expected date of the completion
of the Course:

Expected day of the completion
of the Work-To-Study program:

Student acknowledgment of receipt:

Student Signature:

Invoice received:

Loan Accepted:

Work-To-Study Program accepted:

Dated:

1 Natalia Foley, Esq (SBN 295923)
2 Law Offices of Natalia Foley
3 751 S Weir Canyon Rd Ste 157-455
4 Anaheim CA 92808
5 Tel 714 948 5054/Fax 310 626 9632
6 nfoleylaw@gmail.com
7 Attorney for Defendant
8 5 STAR K-9 ACADEMY, Inc
9 dba MASTER DOG TRAINING,
10 Ekaterina Korotun an individual
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**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE**

DYLAN YEISER-FODNESS, an	)	Case No.: 22STCV21852
individual)	
Plaintiff,	)	ORDER [proposed]
)	
vs.)	
)	
MASTER DOG TRAINING ET AL.)	
Defendants.)	

The motion of DEFENDANT 5 STAR K-9 ACADEMY, Inc dba MASTER DOG TRAINING came on regularly for hearing on _____.

All parties were represented by their counsel of record.

This Court, having considered the Parties' moving and opposing papers and oral arguments, and good cause appearing therefrom, hereby ORDERS:

In light of the arbitration agreement entered into between the parties, the Motion to Compel Arbitration is GRANTED. The Parties are directed to submit the matter to arbitration and the State Case No. 22STCV21852 shall be stayed pursuant to Code of Civil Procedure section 1281.4 pending the outcome of the arbitration.

Dated:

Judge of the Superior Court

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PROOF OF SERVICE

DYLAN YEISER-FODNESS vs. MASTER
DOG TRAINING ET AL.

Case No.: 22STCV21852

1. I, Natalia Foley, am over the age of 18 and not a party of this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is
427 N Canon Drive, Suite 215,
Beverly Hills, CA 90210

2. I served the following document:

Defendant' 5 Star K-9 Academy, Inc
dba Master Dog Training, NOTICE OF MOTION and MOTION to compel arbitration and for order to stay proceedings pursuant to Code of Civil Procedure sections 1281.2 and 1281.4, Memorandum of Points and Authorities, Order [proposed].

by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the US mail with the postage fully prepaid.

- Date of Mailing: 3/19/2023
- Place of Mailing: Los Angeles, CA

Name and Address of Person Served:

Attorney for Plaintiff:

Young W Ryu, Esq
LOYR, APC
1055 West 7th Street, Suite 2290
Los Angeles CA 90017

Attorney for Defendants:

Natalia Foley, Esq
Law Offices of Natalia Foley
751 S Weir Canyon Rd Ste 157-455
Anaheim CA 92808

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 3/19/2023



By Irina Palees,

Legal assistant to attorney Natalia Foley



Make a Reservation

DYLAN YEISER-FODNESS vs MASTER DOG TRAINING, A CALIFORNIA CORPORATION, et al.

Case Number: 22STCV21852 Case Type: Civil Unlimited Category: Wrongful Termination

Date Filed: 2022-07-06 Location: Stanley Mosk Courthouse - Department 52

Reservation

Case Name:

DYLAN YEISER-FODNESS vs MASTER DOG TRAINING,
A CALIFORNIA CORPORATION, et al.

Case Number:

22STCV21852

Type:

Motion to Compel Arbitration

Status:

RESERVED

Filing Party:

5 Star K-9 Academy, Inc., a California corporation
(Defendant)

Location:

Stanley Mosk Courthouse - Department 52

Date/Time:

04/12/2023 9:00 AM

Number of Motions:

1

Reservation ID:

391122088349

Confirmation Code:

CR-CR2D4OHECV5FHXDU4

Fees

Description	Fee	Qty	Amount
Motion to Compel Arbitration	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX2732

Authorization:

016247

Payment Date:

1969-12-31

Print Receipt

[Reserve Another Hearing](#)

[Help](#)