Natalia Foley, Esq (SBN 295923)

Law Offices of Natalia Foley

751 S Weir Canyon Rd Ste 157-455

Anaheim CA 92808

Tel 714 948 5054/Fax 310 626 9632

[nfoleylaw@gmail.com](mailto:nfoleylaw@gmail.com)

Attorney for Defendants

5 STAR K-9 ACADEMY, Inc

dba MASTER DOG TRAINING,

Ekaterina Korotun an individual

**THE SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

**STANLEY MOSK COURTHOUSE**

|  |  |  |
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| DYLAN YEISER-FODNESS, an individual  Plaintiff,  vs.  MASTER DOG TRAINING ET AL.  Defendants. | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No.: 22STCV21852  Defendant’ 5 Star K-9 Academy, Inc  dba Master Dog Training, NOTICE OF MOTION to compel 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 |

**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:

1. 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,
2. this notice of motion,
3. 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
4. on the memorandum served and filed herewith,
5. reservation for hearing served and filed herewith, and
6. 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

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By Natalia Foley, Esq ( SBN 295923)

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**THE SUPERIOR COURT OF CALIFORNIA**

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| DYLAN YEISER-FODNESS, an individual  Plaintiff,  vs.  MASTER DOG TRAINING ET AL.  Defendants. | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No.: 22STCV21852  Defendant’ 5 STAR K-9 ACADEMY, Inc  dba MASTER DOG TRAINING, Motion to compel 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 |

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

**STATEMENT OF FACTS:**

1) Оn 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).

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.

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

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

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

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

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

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WHEREFORE, petitioner prays:

1. That the court order Plaintiff to arbitrate the controversy as herein alleged.

2. That the lawsuit stayed while the arbitration proceeds.

3. That Defendant be awarded costs of suit and attorney’s fees herein incurred.

4. For such other and further relief as the court may deem proper.

Respectfully Submitted

Dated: 3/19/2023

Law Offices of Natalia Foley

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By Natalia Foley, Esq ( SBN 295923)

MEMORANDUM OF POINTS AND AUTHORITIES

**TABLE OF AUTHORITIES**

California Code of Civil Procedure section 1281 et. seq.

California Code of Civil Procedure section 1281.4

Code Civ. Proc. § 1281.2

Cal. Rules of Court, rule 371

American Arbitration Association’s National Rules

AAA Employment Arbitration Rules

AAA Employment Rules 15

AAA Employment Rule 39(d).

AAA Employment Rule 39(c).

Applicable Rules of Arbitration,<https://www.adr.org/sites/default/files/Employment-Rules-Web.pdf>.

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

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

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

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

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

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

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

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

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

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

Cohen v. TNP 2008 Participating Notes Program, LLC (2019) 31 Cal. App. 5th 840, 855, 243 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

Div. of Labor Law Enforcement v. Transpacific Trans. Co., 69 Cal. App. 3d 268, 274-75 (1977)

Emps. Int’l Union v. City of L.A. (1994) 24 Cal. App. 4th 136, 143, 29 Cal. Rptr. 2d 357

Freeman v. State Farm Mut. Auto. Ins. Co. (1975) 14 Cal. 3d 473, 479–480, 121 Cal. Rptr. 477, 535 P.2d 341

Fed. Ins. Co. v. Superior Court, 60 Cal. App. 4th 1370, 1374-75 (1998)

Farrar v. Direct Commerce, Inc., 9 Cal. App. 5th 1257, 215 Cal. Rptr. 3d 785, 2017 Cal. App. LEXIS 262, 2017 WL 10904830

Grupe Development Co. v. Superior Court (1993) 4 Cal. 4th 911, 921 [16 Cal. Rptr. 2d 226, 844 P.2d 545

Gatton v. T-Mobile USA, Inc., 152 Cal. App. 4th 571 , 581 (2007).

Gutierrez v. Autowest, Inc., 114 Cal. App. 4th 77, 7 Cal. Rptr. 3d 267, 2003 Cal. App. LEXIS 1817, 2003 Cal. Daily Op. Service 10633, 2003 D.A.R. 13405).

Gostev v. Skillz Platform, Inc. (Feb. 28, 2023, No. A164407) Cal.App.5th [2023 Cal. App. LEXIS 139].

Giuliano v. Inland Empire Personnel, Inc., 149 Cal. App. 4th 1276, 58 Cal. Rptr. 3d 5, 2007 Cal. App. LEXIS 611, 2007 Cal. Daily Op. Service 4278, 2007 D.A.R. 5413, 154 Lab. Cas. (CCH) P60400 ).

Harris, 248 Cal. App. 4th at 381.

Howard v. Goldbloom (2018) 30 Cal.App.5th 659, 663

Hyundai Amco America, Inc. v. S3H, Inc.(2014) 232 Cal.App.4

Henry Schein, Inc. v. Archer & White Sales, Inc. (2019) 586 U.S. \_\_\_ [202 L. Ed. 2d 480, 139 S.Ct. 524, 530

Izzi v. Mesquite Country Club, 186 Cal.App.3d 1309 (1986).

Little v. Auto Stiegler, Inc. (2003)] 29 Cal.4th [1064,] 1071 [130 Cal. Rptr. 2d 892, 63 P.3d 979

Marsch v. Williams (1994) 23 Cal.App.4th 250, 255]

Mitsubishi Motors v. Soler Chrysler-Plymouth, Inc. (1985) 473 U.S. 614, 626 [105 S. Ct. 3346, 3353-3354, 87 L. Ed. 2d 444

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

Pinnacle Museum Tower Assn. v. PinnacleMarket Development (US), LLC, 55 Cal .4th 223, 246 (2012)

Parada v. Superior Court, 176 Cal. App. 4th 1554, 98 Cal. Rptr. 3d 743, 2009 Cal. App. LEXIS 14160;

Pinnacle Museum Tower Assn., 55 Cal.4th at 236 (general contract law principles determine whether arbitration agreement binding);

RN Solution, Inc. v. Catholic Healthcare West (2008) 165 Cal.App.4th 1511, 1523

Spear v. Cal. State Auto. Ass’n (1992) 2 Cal. 4th 1035, 1040–1043, 9 Cal. Rptr. 2d 381, 831 P.2d 821].

State Farm Mut. Auto Ins. Co. v. Superior Court (1994) 23 Cal. App. 4th 1297, 1301, 28 Cal. Rptr. 2d 711

Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 910 (2015).

Serafin v. Balco Properties Ltd., LLC, 235 Cal.App.4th 165, 178 (2015) (review denied June 10, 2015)

Stirlen v. Supercuts, Inc. (1997) 51 Cal.App.4th 1519, 1532 [60 Cal. Rptr. 2d 138

Sonic II, supra, 57 Cal.4th at p. 1145

Sanchez, supra, 61 Cal.4th at p. 911.) (Kho, supra, 8 Cal.5th at pp. 129–130

Sonic-Calabasas A, Inc. v. Moreno, 57 Cal .4th 1109, 1133 (2013)

Valsan Partners Ltd. P’ship v. Calcor Space Facility, Inc. (1994) 25 Cal. App. 4th 809, 817, 30 Cal. Rptr. 2d 785

Wagner Constr. Co. v. Pac. Mech. Corp. (2007) 41 Cal. 4th 19, 29, 58 Cal. Rptr. 3d 434, 157 P.3d 1029

Zhang v. Superior Court (2022) 85 Cal.App.5th 167 [301 Cal.Rptr.3d 164].)

Zoller v. GCA Advisors, LLC (9th Cir. 2021) 993 F.3d 1198, 1202).

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**I. INTRODUCTION**

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

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

“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.”

A. EXISTENCE OF ENFORCEABLE ARBITRATION CLAUSE

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

(a) Plaintiff’ objection:

Plaintiff incorrectly stated in his opposition dated 11/14/2022, that the arbitration 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.

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

(2) Tests for Evaluating Scope.

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

(c) Defendant’s Analysis:

In this case before the honorable court the arbitration agreement applies because the arbitration clause expressly states that this clause applies to “…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)”. Six out of eight causes of action as stated in the Plaintiff’ complaint are based on Labor Code, others are based on statutes and otherwise.

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

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.

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

B. PLAINTIFF REFUSAL TO ARBITRATE

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

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

II. PLAINTIFFS' COMPLAINT

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

(1) Violation of Calif. Labor Code §§ 226;

(2) Violation of Calif. Labor Code §§ 1194 et sec

(3) Violation of Calif. Labor Code §§ 1198.5

(4) Violation of Calif. Labor Code §§ 226.7, 512, 558 and 1198

(5) Violation of Calif. Labor Code §§ 201-203

(6) Retaliation in Violation of Calif. Labor Code § 98.6

(7) Tortious Wrongful Termination in violation of Public Policy

(8) Violation of Cal. B&R Code §§ 17200, ET SEQ

The above causes of action are premised on Plaintiff’s allegations of Defendant's alleged various violations of Plaintiff’s rights as employee, yet Plaintiff is not alleging any employment 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’ training services. The hereinabove agreement also specifically denies any relationship between Plaintiff and defendant on the page 6, paragraph 8(A)(B) in the following terms:

“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.”

III. ARGUMENT

1. Statute of Limitations

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

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

2. The arbitration agreement is properly authenticated

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

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

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

3. This Honorable Court has power to compel arbitration

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

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

Judicial review is strictly limited to a determination of whether the party resisting arbitration in fact agreed to arbitrate [State Farm Mut. Auto Ins. Co. v. Superior Court (1994) 23 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].

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

4. Defendant has standing to compel arbitration

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

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

5. Plaintiffs' Claims are Subject to Arbitration

An arbitration provision stating that the parties “agree to arbitrate all disputes, claims and controversies arising out of or relating to … the interpretation, validity, or enforceability of this Agreement, including the determination of the scope or applicability of this 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. Court is to grant order directing arbitration unless arbitration clause is not susceptible of interpretation that covers dispute. 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

Here, the arbitration provisions in the Agreement for training services expressly call parties to resolve "all disputes" between them without exceptions through a binding arbitration, 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.

6. Any Challenges to the Validity or Enforceability of the Arbitration Agreement Must

Be Referred to the Arbitrator.

In Aanderud, the any challenge Plaintiff may assert to the validity or enforceability of their agreement to arbitrate must be submitted to the arbitrator according to the express terms of the Performer Contracts. An arbitration provision stating that the parties “agree to arbitrate all disputes, claims and controversies arising out of or relating to … the interpretation, validity, or enforceability of this Agreement, including the determination of the scope or applicability of this 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)

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

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

7. General Applicable Law Regarding Binding Arbitration.

In general, arbitration is strongly favored as a matter of public policy. Izzi v. Mesquite Country Club, 186 Cal.App.3d 1309 (1986). Arbitration agreements are to be liberally construed 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.

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

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

Plaintiffs bear the burden of establishing that the arbitration agreement is invalid. See

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

asserting unconscionability bears the burden of proof because it is a contract defense. Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 910 (2015). Thus, "[t]he burden is on [Plaintiffs], as the party challenging the arbitration agreement, to prove both procedural and substantive unconscionability. " Serafin v. Balco Properties Ltd., LLC, 235 Cal.App.4th 165, 178 (2015) (review denied June 10, 2015) (emphasis added).

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

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

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

The language of the agreement is clear and consistent with the intent of the parties to be governed by the California law, to resolve all disputed by biding arbitration except injunctive relief issues that should be litigated in the court of Los Angeles County, California. Designation 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

Procedural unconscionability focuses on the circumstances surrounding the negotiation of the contract. Gatton v. T-Mobile USA, Inc., 152 Cal. App. 4th 571 , 581 (2007). Specifically, procedural unconscionability can arise from oppression or surprise. Armendariz v. Foundation Health Psychcare Services, Inc. 24 Cal. 4th 83, 1 14 (2000). "Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice. Bruni v. 7 Didion, 1 60 Cal. App. 4th 1 272, 1288 (2008) [internal quotations omitted].

"Surprise involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." (Id.) Defendant did not engage in the type of "surprise or sharp practices" seen in instances where procedural unconscionability is found. See Baltazar v. Forever 21, Inc. , 62 Cal .4th 1 237, 1 2 1 245 (201 6) .

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

10. The Arbitration Provisions Are Not Substantively Unconscionable

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

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

Plaintiff is further arguing that the requirement for neutral arbitrators is satisfied by 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.

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

B. Incorporation of AAA rules satisfied Armendariz’ analyses:

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

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

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

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

Third, the Agreement, under AAA Employment Rules, provides for more than adequate discovery procedures for gathering relevant evidence and testimony, as such forum provides mechanisms for initial disclosures, interrogatories, requests for production and depositions. Specifically, AAA Employment Rules provide: “The arbitrator shall have the authority to order 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.)

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

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

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

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

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

All of these formulations point to the central idea that the unconscionability doctrine is concerned not with ‘a simple old-fashioned bad bargain’ [citation], but with terms that are ‘unreasonably favorable to the more powerful party.’” (Sonic II, supra, 57 Cal.4th at p. 1145.) Unconscionable terms “‘impair the integrity of the bargaining process or otherwise contravene the 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.)

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

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

D. Application of Armendariz should be approached with cautions

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

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

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

11. The Parties Entered Into a Valid Agreement to Arbitrate

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

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

12. The Agreement is Enforceable

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

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

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

California law fully supports a trial court's power to dismiss, rather than stay, a case in which the parties have an agreement to arbitrate. See Charles J Rounds Co. v. Joint Council of Teamsters No. 42, 4 Cal.3d 888, 890, 894, 900 (1971) (upholding trial court's dismissal of a complaint on the ground the dispute in the lawsuit was covered by an arbitration clause).

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.

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

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

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

IV. CONCLUSION

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

Respectfully Submitted

Dated: 03/19/2023

Law Offices of Natalia Foley

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By Natalia Foley, Esq ( SBN 295923)

Exhibit 01

Natalia Foley, Esq (SBN 295923)

Law Offices of Natalia Foley

751 S Weir Canyon Rd Ste 157-455

Anaheim CA 92808

Tel 714 948 5054/Fax 310 626 9632

[nfoleylaw@gmail.com](mailto:nfoleylaw@gmail.com)

Attorney for Defendant

5 STAR K-9 ACADEMY, Inc

dba MASTER DOG TRAINING,

Ekaterina Korotun an individual

**THE SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

**STANLEY MOSK COURTHOUSE**

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

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

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: | Attorney for Defendants: |
| Young W Ryu, Esq  LOYR, APC  1055 West 7th Street, Suite 2290  Los Angeles CA 90017 | 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