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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Dan Rife, an individual,

Plaintiff,

v.

Cerner Corporation,

Defendant.

Case No. 23CV2303-W-MMP

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT CERNER CORPORATION'S MOTION TO COMPEL ARBITRATION

(NO ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1.d.1)

Hearing Date: March 11, 2024

Hon. Thomas J. Whelen

PRELIMINARY STATEMENT

Plaintiff has brought this action, alleging multiple causes of action arising from his employment at Defendant Cerner Corporation ("Cerner"). However, Plaintiff voluntarily executed the Cerner Mutual Arbitration Agreement (the "MAA"), requiring the arbitration of the claims he now brings against Cerner. (Declaration of Erin Kobler ("Kobler Decl."), Exhibit A, at 1).

Cerner demanded Plaintiff arbitrate his causes of action, but Plaintiff refused.

Because the MAA covers Plaintiff's causes of action and is a valid and enforceable arbitration agreement, Cerner respectfully requests this Court compel Plaintiff to arbitrate.

BACKGROUND

A. Plaintiff Agreed to Binding Bilateral Arbitration Covering All Employment-Related Claims.

Plaintiff electronically signed the MAA on or about November 30, 2015. (Kobler Decl. at ¶ 9 & Ex. A). Plaintiff reviewed the MAA through an online portal and signed electronically. (Kobler Decl., Ex. A at 4). Plaintiff acknowledged that he read and understood the MAA, and that his electronic signature bound him by the terms of a binding agreement to arbitration. (*Id.*)

The MAA section titled "Mutual Agreement to Arbitrate; Claims Covered by the Agreement" defines "Covered Claims" to include claims

> "brought under any statute, regulation, law, local ordinance, contract, covenant (express or implied), or common law relating to my employment with Cerner, including but not limited to those concerning employee benefit plans, compensation, discrimination, harassment, retaliation, recovery of bonus, tuition reimbursement or relocation benefits, leave of absence, disability or other accommodation, or termination of employment."

(Kobler Decl., Ex. A at 1). The MAA expressly states Covered Claims are those brought by "me" or "Cerner Corporation and its subsidiaries, affiliates, their current or former officers, directors, employees, or agents, and/or their successors and assigns." (Kobler Decl., Ex. A at 1). The MAA further sets for that it "will survive the termination of my employment." (Kobler Decl., Ex. A at 4).

The MAA specifies a dispute resolution process for Covered Claims. The process is to begin with a written demand for arbitration that describes the nature of all asserted claims and the relief sought. (Kobler Decl., Ex. A at 2). However, claims required by law to be brought before an administrative agency before the commencement of a lawsuit are to undergo the administrative process prior to the issuance of a written demand. (*Id.*). The MAA sets forth that the arbitration will take place at a mutually convenient location and

will utilize a qualified arbitrator who will apply, and not deviate from, all the substantive state and/or federal law governing the claims. (Kobler Decl., Ex. A at 2-3).

B. Plaintiff Filed a Complaint Alleging Covered Claims.

Plaintiff's Complaint alleges five causes of action, all arising out of Plaintiff's employment with Cerner (*see generally* Complaint). Accordingly, all five claims are subject to arbitration under the MAA. (Kobler Decl., Ex. A at 1). The First through Third causes of action are all based on federal law and Cerner's purported violations of the Civil Rights Act of 1964; (*see, e.g.*, Complaint at ¶¶ 59-66, 67-76, and 77-84); and the Fourth and Fifth causes of action alleges violations of the California Fair Employment and Housing Act. (*See id.* at ¶¶ 85-95, 96-104).

ARGUMENT

I. The Federal Arbitration governs the MAA and mandates its enforcement.

The Federal Arbitration Act ("FAA") was enacted to reverse the "longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements upon the same footing as other contracts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995); *Circuit City Stores v. Adams*, 532 U.S. 105, 122-23 (2001). Quite simply, the FAA establishes a federal policy in favor of arbitration. *Perry v. Thomas*, 482 U.S. 483, 489 (1987).

The FAA permits private parties to "trade [] the procedures . . . of the courtroom for the simplicity, informality, and expedition of arbitration." *Gilmer*, 500 U.S. at 31 (quotations omitted). This "liberal federal policy favoring arbitration agreements" in effect creates "a body of substantive federal law of arbitrability, applicable to any arbitration agreement" covered by the FAA. *Perry*, 482 U.S. at 489 (quotations omitted). The Supreme Court warns against judicial rulings designed to erode FAA precedence "by indirection." *Circuit City Stores, Inc.*, 532 U.S. at 122. On the contrary, Congress' intent

was "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

The FAA governs the interpretation and enforcement of arbitration agreements, including those related to employment, such as the MAA. *See E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) (contracts to arbitrate employment disputes are covered by the FAA). The FAA states in part:

> "A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration and controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

9 U.S.C. § 2. Here, the parties expressly agreed that the FAA governs the MRPA. (Kobler Decl., Ex. A at 1).

Furthermore, courts must broadly construe the term "involving commerce" to include activities that in any way relate to interstate commerce. *See Allied-Bruce Terminix Cos., Inc., v. Dobson*, 513 U.S. 265, 273-275, 277 (1995) ("involving commerce" reaches full extent of Congress's power under the Commerce Clause); *see Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001) (Allied-Bruce's rule applies in most employment contexts). Therefore, the FAA governs an arbitration agreement when the underlying contract facilitates interstate commercial transactions or directly or indirectly affects commerce between the states. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 401 & n.7 (1967) (rejecting necessity of literal interstate transaction). "Employment contracts . . . are covered by the FAA." *Waffle House, Inc.*, 534 U.S. at 289. The FAA preempts all conflicting state laws. *Southland Corp. v. Keating*, 465 U.S. 1, 15-16 (1984).

The MAA "involv[es] commerce" as it relates to and governs disputes stemming from Plaintiffs employment with CCFS. CCFS itself engages in a business "involving

commerce" by selling products that traveled or travel through interstate commerce and providing services, including visitation to the crematory, that involve persons that have traveled across state lines.

II. Plaintiff's claims must be arbitrated because they are covered by an enforceable agreement to arbitrate.[1]

Validity of an arbitration agreement is governed by general principles of state contract law. *Marenco v. DirecTV LLC*, 233 Cal.App.4th 1409, 1417-18 (2015). In California, a valid arbitration agreement exists where there is an offer, acceptance, and bargained-for consideration. *Id.* Mutual promises to arbitrate claims constitute legally sufficient consideration to support an arbitration agreement. *See Garner v. Inter-State Oil Co.*, 52 Cal.App.5th 619, 625 (2020) (finding sufficient consideration for a binding arbitration agreement where the parties made a mutual promise to arbitrate).

Moreover, in moving to compel arbitration of Plaintiff's claim, Defendant's burden of proof is minimal. To satisfy its initial burden of establishing the existence of an arbitration agreement, a defendant need only submit a copy of the agreement. *Espejo v. S. Cal. Permanente Med. Group,* 246 Cal.App.4th 1047, 1060 (2016). Defendant has done so here, by attaching the MAA. (Kobler Decl., Ex. A).

A. Plaintiff knowingly and voluntarily entered into a binding agreement to arbitrate.

Plaintiff accepted and agreed to the MAA electronically, which is no barrier to its enforcement as a valid contract. *See* California Uniform Electronic Transactions Act ("UETA"), Cal. Civ. Code § 1633.1 *et seq*. Under the UETA, an electronic record satisfies

[1] Two Missouri courts (on at least four occasions) have previously compelled plaintiffs who signed similar MAAs with Cerner to arbitrate their claims against Cerner. In 2017, this Court found that the MAA was valid and enforceable, ordering the claims of certain opt-in plaintiffs to arbitration. *See* Order, attached as Exhibit 1. Likewise, in 2020, Judge Campbell of the Circuit Court of Jackson County, Missouri entered an Order compelling arbitration of employment law claims against Cerner. See Order, attached as Exhibit 2. Then, on April 19, 2023, Judge Dale Youngs granted Cerner's motion to compel arbitration of employment discrimination claims. *See* Order, attached as Exhibit 3. Most recently, on July 21, 2023, Judge Torrence granted Cerner's motion to compel arbitration of employment discrimination claims. *See* Order, attached as Exhibit 4.

the requirement that a record be in writing. Cal. Civ. Code § 1633.7(c). Thus, "[i]f a law requires a signature, an electronic signature satisfies the law." *Id.* § 1633.7(d). Moreover, the UETA states that a "signature" on a contract "may not be denied legal effect or enforceability solely because it is in electronic form." *Id.* § 1633.7(a) & (c).

Here, the accompanying declaration establishes that Plaintiff reviewed the MAA through an online portal. (Kobler Decl. at ¶¶ 8-9 and Ex. A). Plaintiff then electronically checked a box acknowledging his receipt, review, and understanding of the MAA and its binding nature. (Kobler Decl. at ¶ ¶ 8-9 and Ex. A at 4). Thereafter, Plaintiff provided his electronic signature. (Kobler Decl. at ¶ ¶ 8-9 and Ex. A at 4). Consequently, Plaintiff's electronic acceptance is legally binding under California law.

B. Plaintiff's claims are "Covered Claims" under the MAA.

The FAA requires that the claims fall within the scope of the arbitration agreement. "[I]t has been established that where the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *AT&T Tech., Inc. v. Comm. Workers of Am.*, 475 U.S. 643, 650 (1986) (internal citations and quotations omitted).

In the MAA, Plaintiff and Cerner agreed to arbitrate claims "brought under any statute [or] law relating to [Plaintiff's] employment with Cerner, including but not limited to those concerning . . . discrimination, harassment, retaliation . . . disability or other accommodation, or termination of employment . . . ." (Kobler Decl. ¶ 15, Ex. A at 1). Plaintiff's claims allege discrimination, retaliation, and failure to accommodate and directly arise out of his employment with Cerner. Accordingly, Plaintiff's claims fall squarely within the parameters of the parties' enforceable arbitration agreement.

C. The MAA is valid and enforceable pursuant to California law.

California state law dictates that arbitration agreements are only revocable under general contract principles, such as fraud, duress, or unconscionability. *See Tiri v. Lucky Chances, Inc.*, 226 Cal.App.4th 231, 239 (2014). Plaintiff has no factual basis to allege fraud or duress. He was offered the opportunity to sign the MAA and chose to do so—Cerner in no way coerced or tricked him into signing.[2]

The analysis of unconscionability considers both procedural and substantive unconscionability. *Baltazar v. Forever 21, Inc.*, 62 Cal.App.4th 1237, 1243-44 (2016). Procedural unconscionability looks at the formalities of making the contract: whether or not one of the parties exerted high pressure on the other party during the negotiations, misrepresented material facts to the other party, or had a significantly unequal bargaining power over the other. *Id.* An analysis of substantive unconscionability looks at the contract's terms and whether or not they are unduly harsh. *Id.* For a contract to be void on the basis that it is unconscionable, it must be both procedurally and substantively unconscionable. *Id.*

The MAA was not procedurally unconscionable, as it was a stand-alone arbitration agreement, not buried in any other set of documents. *See* Kobler Decl., Ex. 1, ¶ 29. The MAA uses clear and conspicuous language indicating the impact of the arbitration agreement. The MAA makes clear that by signing, the parties agree that arbitration is the only forum by which covered claims may be resolved. Kobler Decl., Ex. A. It further provides: **"THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES IN ACORDANCE WITH THE FEDERAL ARBITRATION ACT."** Kobler Decl., Ex. A

[2] To be sure, Cerner has not waived its right to enforce the arbitration agreement: it has brought this motion before any discovery, and before Plaintiff has suffered any prejudice. *See Lewallen v. Green Tree Servicing, L.L.C.*, 487 F.3d 1085, 1090 (8th Cir. 2007) (finding that a party must take some action inconsistent with its right to arbitrate to waive enforcement of an arbitration provision).

at 4 (emphasis in original). There can be no realistic argument that Cerner used unreasonable or impermissible tactics to somehow trick the Plaintiff into signing the MAA.

Moreover, the MAA is not substantively unconscionable. Courts find substantive unconscionability when the MAA includes "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." *OTO, LLC v. Kho*, 8 Cal.5th 111, 130 (2019). The MAA has no such provisions: the MAA is mutually binding; Cerner agreed to pay any additional costs associated with arbitration; and the MAA provides the arbitrator with the right to award attorney fees as well as "the same authority to order remedies (*e.g.*, emotional distress damages, punitive damages, equitable relief, etc.) as would a court of competent jurisdiction." Kobler Decl., Ex. A at 2. Thus, the MAA is not substantively unconscionable. In sum, there is simply no basis on which Plaintiff could claim the MAA is unenforceable.

CONCLUSION

For the foregoing reasons, Cerner requests that the Court compel arbitration of the dispute and stay the pending litigation between the parties, and grant such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED this 2nd day of February, 2024.

STINSON LLP

By _____

Carrie M. Francis
1850 North Central Avenue, Suite 2100
Phoenix, Arizona 85004-4584
Attorneys for Defendant

Exhibit 1

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA CRAWFORD, Plaintiff,	)	
v.	)	Case No. 4:17-00015-CV-RK
CERNER CORPORATION, Defendant.	)	

ORDER

Before the Court is Defendant Cerner Corporation ("Cerner")'s Motion to Dismiss and Compel Arbitration (the "Motion"). (Doc. 20.) In the Motion, Defendant asks the Court to dismiss claims of former Cerner employees who have signed an arbitration agreement covering the claims asserted in this action. (*Id.*) For the following reasons, the Motion is **GRANTED in part** and **DENIED in part**.

I. Procedural Background

Plaintiff brought this purported collective action under the Fair Labor Standards Act ("FLSA") and Missouri Minimum Wage Law ("MMWL") on behalf of herself and "similarly situated" employees of Cerner. (Doc. 1.) Plaintiff alleges that she, along with other Technical Solution and/or Support Analysts ("TSAs") in SolutionWorks and/or AMS[1] employed by Cerner, were classified as salaried exempt associates and were not paid overtime wages for hours worked over 40 hours per week in violation of the FLSA and MMWL. (*Id.*)

Four individuals have filed consents to join the lawsuit. (Docs. 7, 9, 10, 15.) In the instant Motion, Cerner seeks to dismiss and compel arbitration of FLSA and MMWL claims asserted by three individuals – Erin Morris, Milan Greene, and Meghan Lane – who have filed consents to join the lawsuit arguing that each of those employees signed an arbitration agreement which covers those claims. (Doc. 20.) Plaintiffs oppose the Motion. (Doc. 27.)

While the Motion was pending, Plaintiffs filed a Motion for Conditional Collective Action Certification which sought to certify the following class:

[1] The parties have since clarified the record noting that "[t]he actual names of the roles at issue are 'Technical Support Analyst' (in Cerner's SolutionWorks organization) and 'Technical Solution Analyst' (in Cerner's AMS and SolutionWorks organizations)." (Doc. 31.)

> All Technical Solution and/or Support Analysts ("TSAs") employed in Cerner's AMS or SolutionWorks Organizations within the past 3 years.

(Doc. 29.) Subsequently, the parties filed a joint stipulation to conditionally certify a class (doc. 31) which excludes employees who signed the arbitration agreement at issue in Cerner's motion to dismiss and compel arbitration (doc. 20). The stipulation noted that the parties disagree as to the merits of the motion to compel arbitration (doc. 20) and the motion to conditionally certify Plaintiff's proposed class (doc. 29). However, they agreed to stipulate to certification as outlined in the joint stipulation. (Doc. 31.) The Court then entered an Order conditionally certifying the class provided in the parties' joint stipulation. (Doc. 32.) Additionally, the Court was notified by its Mediation and Assessment Program Office that the parties reached a resolution as to individuals covered by the joint stipulation which only includes those who did not sign an arbitration agreement with Cerner that contained a collective action waiver. The settlement does not cover the individuals at issue in the instant Motion.

II. Factual Background

Plaintiffs Morris, Greene, and Lane were previously employed by Cerner. (Doc. 20-1 at 1.) While they were employed, Cerner announced an arbitration program available to them. (*Id.* at 2.) In connection with the announcement, Cerner employees (including Morris, Greene, and Lane) were given a link to a Mutual Arbitration Agreement ("MAA") to review and consider. (*Id.*) Although there was no deadline by which to sign the MAA, employees who signed the MAA within 15 days received a stock option grant valued at $500. (*Id.*)

Continued employment was not conditioned on signing the MAA. (*Id.*) However, eligibility for future performance-based compensation increases, including merit-based salary increases, merit-based equity grants, and merit-based target bonus level changes, were conditioned on signing the MAA. (*Id.*) Employees who did not sign the MAA remained eligible for non-performance based compensation increases. (*Id.*) Morris, Greene, and Lane signed the MAA within the 15-day window, received stock options, and remained eligible for performance-based compensation increases. (*Id.* at 2-17.)

The MAAs state that Cerner and the employee agree that claims brought under any statute or law relating to the employee's employment with Cerner, including those claims related to compensation, "will be submitted to and determined exclusively by binding arbitration in accordance with the Federal Arbitration Act." (*Id.* at 4, 9, 14.) It further states that the employee

understands that arbitration is the only forum to resolve specified claims and that Cerner and the employee waive the right to trial before a judge or jury in federal or state court. (*Id.*)

Discussion

The Federal Arbitration Act (the "FAA"), 9 U.S.C. § 1 *et seq.*, "declare[s] a national policy favoring arbitration." *Nitro-Lift Techs., L.L.C. v. Howard*, 133 S. Ct. 500, 503 (2012). The FAA states that agreements[2] to settle a controversy arising from a contract by arbitration "shall be valid, irrevocable, and enforceable," unless grounds exist at law or in equity that allow for revocation of the contract. 9 U.S.C. § 2. In deciding whether to compel arbitration, courts are limited to determining "(1) whether there is a valid arbitration agreement and (2) whether the particular dispute falls within the terms of the agreement." *Faber v. Menard, Inc.*, 367 F.3d 1048, 1052 (8th Cir. 2004). "When a valid arbitration agreement undisputedly encompasses the claim, a court must enforce the agreement according to its terms." *Perras v. H&R Block, Inc.*, No. 12-00450-CV-W-BP, 2013 U.S. Dist. LEXIS 189175, at *5 (W.D. Mo. Nov. 13, 2013) (citing 9 U.S.C. § 2; *Pro Tech Indus., Inc. v. URS Corp.*, 377 F.3d 868, 871 (8th Cir. 2004)).

Plaintiff does not dispute that the particular claims in this case fall within the terms of the MAA. Moreover, Plaintiff only disputes the validity of the MAA with respect to a single section– the class or collective action waiver.[3] However, binding precedent approves the MAA's waiver of class or collective action in any forum. *Owen v. Bristol Care, Inc.*, 702 F.3d 1050, 1054-55 (8th Cir. 2013) (holding that class waivers are enforceable in claims brought under the FLSA); *Cellular Sales of Missouri, LLC v. National Labor Relations Board*, 824 F.3d 772, 775-76 (8th Cir. 2016) (holding that an employer did not violate the National Labor Relations Act by requiring its employees to enter into arbitration agreements that contained collective action waivers in all forums).

Although the Supreme Court may soon resolve a similar issue,[4] for now, the law in the Eighth Circuit requires Morris, Greene, and Lane's FLSA and MMWL claims to be arbitrated.

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[2] The FAA is limited to maritime transactions and contracts evidencing a transaction involving commerce. 9 U.S.C. § 2. The parties do not dispute that this contract is governed by the FAA. (*See generally* Docs. 20 and 27.)

[3] Here, the MAA requires that any dispute concerning its class or collective action waiver section "be decided by a court of competent jurisdiction and not by an Arbitrator."

[4] In opposing Defendant's motion to compel arbitration, Plaintiff requests that the Court reserve judgment pending the United States Supreme Court decision in the following consolidated cases: *Epic Systems Corp. v. Lewis*, No. 16-285 (U.S. Jan. 13, 2017); *Ernst & Young LLP v. Morris*, No. 16-300 (U.S. Jan. 13, 2017); *National Labor Relations Board v. Murphy Oil USA, Inc.*, No. 16-307 (U.S. Jan. 13,

Conclusion

The claims asserted by Plaintiffs Morris, Greene, and Lane fall within the scope of their valid and enforceable MAAs. Therefore, those claims must be arbitrated.

Accordingly, Defendant's Motion to Dismiss and Compel Arbitration (doc. 20) is **GRANTED in part** and **DENIED in part**. Plaintiffs Morris, Greene, and Lane shall submit their claims to arbitration in accordance with the terms of the MAA. These individual claims are hereby **STAYED** pending completion of arbitration. 9 U.S.C. § 3. Counsel for the parties shall file a joint status update within 90 days of the date of this Order and every 90 days thereafter until the claims are finally resolved. Failure to do so may lead to dismissal of these Plaintiffs' individual claims for lack of prosecution.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: October 11, 2017

2017). In each of those cases, the employer required employees to sign an arbitration agreement that contained a collective action waiver. *Lewis v. Epic Sys. Corp.*, 823 F.3d 1147, 1151 (7th Cir. 2016) (holding that a contract that limits collective action "that is agreed to as a condition of continued employment qualifies as 'interfer[ing] with' or 'restrain[ing] ... employees in the exercise' of those rights in violation of Section 8(a)(1) [of the NLRA]"); *Morris v. Ernst & Young, LLP*, 834 F.3d 975, 979 (9th Cir. 2016)(holding that "[a]n employer may not condition employment on the requirement that an employee sign [a contract that forecloses the possibility of concerted work-related legal claims]"); *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013, 1015 (5th Cir. 2015). The question to be addressed by the United States Supreme Court is whether an agreement that requires an employee to waive class and collective proceedings is enforceable. Here, Cerner employees were not required to sign the arbitration agreement which contains the collective action waiver. This is especially clear as other Plaintiffs in this action chose not to sign the arbitration agreement. Therefore, the Court will not reserve judgment pending the upcoming decision from the United States Supreme Court.

Exhibit 2

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

C VETERE	)	
Plaintiff,	)	
	)	
	)	**Case No. 2016-CV13004**
v.	)	**Division 10**
	)	
CERNER CORPORATION	)	
Defendant.	)	

ORDER GRANTING MOTION
TO COMPEL ARBITRATION AND STAY PROCEEDINGS

On this 8th day of October, 2020, the Court considers Defendant's Motion to Compel Arbitration and Stay Proceedings. Upon review of the matter, and for good cause shown, said motion is hereby GRANTED. This matter shall be stayed pending conclusion of the arbitration proceedings.

IT IS SO ORDERED.

10-08-2020
Date

HONORABLE PATRICK WILLIAM CAMPBELL

CERTIFICATE OF SERVICE
I hereby certify that copies of the above and foregoing were mailed/emailed/faxed to:
MOLLY ELIZABETH WALSH, Attorney for Defendant, STINSON LLP, 1201 WALNUT STREET, SUITE 2900, KANSAS CITY, MO 64106,
SARA ELIZABETH WELCH, Attorney for Defendant, STINSON LLP, 1201 WALNUT STREET, SUITE 2900, KANSAS CITY, MO 64106,
C KEVIN BALDWIN, Attorney for Plaintiff, 14 SOUTH MAIN STREET, LIBERTY, MO 64068, (816) 842-1104, Kevin@bvalaw.net
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SYLVIA ALEJANDRA HERNANDEZ, Attorney for Plaintiff, 14 SOUTH MAIN STREET, LIBERTY, MO 64068, sylvia @bvalaw.net

Law Clerk or JAA, Division 10

Exhibit 3

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

EMILY GIBSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2316-CV00479
	)	Division 6
CERNER CORPORATION,	)	
	)	
Defendant.	)	

ORDER

On March 31, 2023, defendant Cerner Corporation filed its Motion to Compel Arbitration and Stay Proceedings in the above matter. No suggestions in opposition to the motion have been filed, and the deadline for doing so has passed. Jackson County Local Rule 33.5.1. Being duly advised in the premises, the Court determines that the motion should be, and the same is hereby, GRANTED. This action is stayed pending arbitration of plaintiff's claims against defendant. The case management conference scheduled for April 20, 2023 is CANCELLED.

IT IS SO ORDERED.

April 19, 2023

Date

J. DALE YOUNGS
Circuit Judge

Notice of the entry of this order has been provided via the electronic filing system to counsel of record, and was e-mailed to counsel on this date.

Kathryn Richardson, Law Clerk, Division 6

Exhibit 4

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

JOSHUA BLOOME,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2316-CV07855
	)	
CERNER CORPORATION,	)	
	)	
Defendant.	)	
	)	
	)	

ORDER

Plaintiff filed this lawsuit against Cerner Corporation, his former employer, alleging discrimination based on disability in violation of the Missouri Human Rights Act ("MHRA"). Now before the Court is Defendant Cerner Corporation's Motion to Compel Arbitration and Stay Proceedings ("Defendant's Motion"). For the following reasons, the motion is **GRANTED**.

Plaintiff's Suggestions in Opposition to Defendant's Motion do not controvert any of the facts set forth in the Statement of Facts contained in Defendant's Motion. As such, the Court accepts those facts as true for purposes of deciding Defendant's Motion. In particular, the Court finds that both Cerner and Plaintiff executed a Mutual Arbitration Agreement ("MAA") on or around February 24, 2021 that requires arbitration of all claims relating to Plaintiff's employment with Cerner.

There is no dispute that Cerner was involved in interstate commerce, and Plaintiff himself alleges that his work for Cerner required interstate travel. Petition at ¶¶ 11, 12. As a result, the Federal Arbitration Act ("FAA") applies to the MAA. *Frye v. Speedway Chevrolet Cadillac,* 321 S.W.3d 429, 436 n. 12 (Mo. Ct. App. 2010); *Rose v. Sabala*, 632 S.W.3d 428, 432 (Mo. Ct. App. 2021). The FAA requires courts to enforce arbitration agreements according to their terms. 9

U.S.C. §§ 2, 4. A Missouri court can declare an arbitration agreement unenforceable only if a "generally applicable contract defense, such as fraud, duress or unconscionability, applies to concerns raised about the agreement." *Eaton v. CMH Homes, Inc.*, 461 S.W.3d 426 (2015). Plaintiff here has not alleged any fraud or duress in the execution of the MAA.

Plaintiff's sole challenge to the enforceability of the MAA is his contention that the MAA is a contract of adhesion and, therefore, is unenforceable. However, a contract of adhesion "is not necessarily unenforceable." *Rose*, 632 S.W.3d at 433. Instead, "courts review adhesion contracts to ensure that the contract matches the parties' 'reasonable expectations.'" *Id.* (citing *Swain v. Auto Services, Inc.*, 128 S.W.3d 103, 107 (Mo. Ct. App. 2003)). Plaintiff alleges a disparity in bargaining power but provides no evidence that he made any attempt to negotiate the terms of his employment or the MAA. Plaintiff's "conclusory allegations that he was unable to alter the terms of his contract and that there was a disparity in the parties' bargaining power do not prove themselves, nor would they make the agreement unconscionable." *State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 809 (2015). *Id.* Mere inequality in bargaining power does not - without more - render arbitration agreements unenforceable in the employment context. *Id. See also, Swain*, 128 S.W.3d at 108 (holding an "agreement choosing arbitration over litigation, even between parties of unequal bargaining power, is not unconscionably unfair").

Based on the record presented and considering the contractual language of the MAA as well as the totality of the circumstances, the Court determines that the MAA is a valid and enforceable agreement that comports with the parties' reasonable expectations. Plaintiff has not shown the MAA to be procedurally or substantively unconscionable and has not otherwise demonstrated, based on the circumstances, why he should not reasonably have expected that he would be required to arbitrate his current employment dispute with Cerner.

For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff is compelled to arbitrate his claims against Defendant and this matter is **STAYED** pending completion of arbitration.

IT IS FURTHER ORDERED that this case shall come before the case for a Status Conference on January 31, 2024, at 9:00 a.m. in Division 14 via WebEx. The link is https://mocourts.webex.com/meet/div14chambers.

IT IS SO ORDERED.

Dated: July 21, 2023

John M. Torrence
Circuit Judge

Certificate of Service
This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.

Law Clerk / Judicial Administrative Assistant, Division 14