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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**Dan Rife**, an individual;

Plaintiff,

v.

**CERNER CORPORATION**;

Defendants.

Case No.: 23CV2303-W-MMP

**PLAINTIFF'S OPPOSTION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION**

Hearing Date: March 11, 2024
Hon. Thomas J. Whelen

## I. INTRODUCTION

On February 2, 2024, Defendant filed a Motion to Compel Arbitration ("Motion") alleging Plaintiff Dan Rife ("Mr. Rife") voluntarily executed a Mutual Arbitration Agreement ("MAA"). Defendant's Motion to Compel Arbitration, ECF No. 7. Defendant's Motion omits important facts regarding the implementation of the MAA and fails to address the fatal flaws of the actual MAA. Defendant's Motion is an unseemly attempt to remove this case from the Court's jurisdiction to force Mr. Rife into a forum he did not willingly choose. For the following reasons, Defendant's Motion should be denied.

*First*, the MAA is unenforceable because it is procedurally unconscionable. Indeed, in 2015, over two years after Mr. Rife started working for Defendant, Defendant presented Mr. Rife with the MAA. Mr. Rife had already been working for Defendant and instead of requesting Mr. Rife's consent to the MAA at the start of his employment, Defendant conditioned Mr. Rife's eligibility for future compensation on his consent to the MAA. The implementation of the MAA presented unfair bargaining power between Mr. Rife and Defendant.

*Second*, the MAA is unenforceable because it is substantively unconscionable. Under the terms of the MAA, an employee faces an unnecessary gatekeeping roadblock when it comes to bringing discrimination claims under Title VII of the Civil Rights Act of 1964 or California's Fair Employment and Housing Act because he is still required to go through the appropriate administrative agency before he can initiate an arbitration demand. Meanwhile, the MAA does not require any gatekeeping roadblocks for Cerner to initiate arbitration.

In sum, Defendant does not proffer any legitimate arguments that should preclude this Court from reaching the merits of this case. Accordingly, this Court should dismiss Defendant's Motion to Compel Arbitration.

## II. LEGAL STANDARD

The Federal Arbitration Act ("FAA") provides that written agreements to

arbitrate disputes "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or inequity for the revocation of any contract." 9 U.S.C. § 2. "[B]efore referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019). A district court's role under the FAA is limited to determining: "(1) whether a valid agreement to arbitrate exists; and if it does, (2) whether the agreement encompasses the dispute at issue." *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir.2004). "If the district court determines that a valid arbitration agreement encompasses the dispute, then the FAA requires the court to enforce the arbitration agreement in accordance with its terms." *Garcia v. Dell, Inc.*, 905 F. Supp. 2d 1174, 1177 (S.D. Cal. 2012).

## III. STATEMENT OF FACTS

For nearly eight years, Mr. Rife was a dedicated and hardworking engineer for Cerner Corporation ("Defendant"). While working for Defendant, Mr. Rife was promoted multiples times, beginning as a workstation technician and advancing to a senior systems engineer. ECF No. 1, Complaint ("Complaint"), ¶¶ 24-25. More than two years after he began working for Defendant, Defendant presented Mr. Rife with a Mutual Arbitration Agreement ("MAA"). Declaration of Dan Rife ("Rife Decl."), ¶¶ 2, 5. The MAA conditioned Mr. Rife's eligibility for any performance- and merit-based compensation or bonuses on his consent to the terms of the MAA. *Id.*, ¶ 6; Exh. A, p. 1. Mr. Rife believed he had to consent to the MAA or forego any subsequent compensation promotions. *Id.*, ¶¶ 7, 9. On November 15, 2015, Mr. Rife signed the MAA. *Id.*, ¶ 8.

On or around July 2021, Defendant announced its COVID-19 vaccine mandate policy, which required that employees obtain a COVID-19 vaccine or an exemption to be completed by September 30, 2021. Complaint, ¶ 29. Mr. Rife submitted a valid religious accommodation request to Defendant's mandatory COVID-19 vaccine policy. *Id.*, ¶¶ 33-36. Defendant refused to engage in any

interactive process with Mr. Rife (*id.*, ¶¶ 37-38, 43-48), and instead of accommodating or even attempting to accommodate Mr. Rife's religious beliefs, Defendant denied his religious accommodation request (*id.*, ¶¶ 39-40). Consistent with his sincerely held religious beliefs, Mr. Rife did not comply with Defendant's COVID-19 vaccine mandate. *Id.*, ¶ 52. Defendant subsequently discharged him from employment for failing to comply with its COVID-19 vaccine mandate. *Id.*, ¶ 53.

Mr. Rife filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") which found reasonable cause to believe that Defendant violated statutory law. *Id.*, ¶ 56-57. The EEOC subsequently issued Mr. Rife a right-to-sue letter. *Id.*, ¶ 57. On December 18, 2023, Mr. Rife filed the instant cause of action alleging Defendant violated his rights on the Civil Rights Act of 1964 and California's Fair Employment and Housing Act. *Id.*, ¶¶ 59-104.

## IV. ARGUMENT

Defendant argues that the FAA mandates enforcement of the MAA and that Mr. Rife's "claims must be arbitrated because they are covered by an enforceable agreement to arbitrate." Mot. at 3-5. However, Defendant's assertions are misplaced. Defendant's attempt to have this Court compel arbitration based upon the MAA is improper because the MAA is unenforceable.

Unconscionability is a "generally applicable contract defense, which may render an arbitration provision unenforceable." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1280 (9th Cir. 2006). "California courts analyze contract provisions for both procedural and substantive unconscionability." *Id.* Both procedural unconscionability and substantive unconscionability must be shown, but "they need not be present in the same degree and are evaluated on a sliding scale." *Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 247 (2012) (cleaned up). The MAA is both procedurally and substantively unconscionable and is therefore unenforceable.

**A. The MAA Is Unenforceable Because It Is Procedurally Unconscionable**

Defendant argues that the MAA was not procedurally unconscionable because "it was a stand-alone arbitration agreement, not buried in any other set of documents." Mot. at 7. However, Defendant's assertions fail to identify the totality of the circumstances surrounding the presentation and implementation of the MAA.

An arbitration clause is considered procedurally unconscionable when the circumstances of its formation involve oppression or surprise due to an imbalance of power between the parties involved. *Dotson v. Amgen, Inc.*, 181 Cal.App.4th 975, 980 (2010). This typically arises when the weaker party was presented with the clause on a "take-it-or-leave-it" basis, with no opportunity for negotiation. *Nagrampa*, 469 F.3d at 1281 (citing *Szetela v. Discover Bank*, 97 Cal.App.4th 1094, 1100 (2002)). The concept of oppression often relates to a lack of negotiation and meaningful choice, while surprise pertains to the extent to which the allegedly unconscionable provision is hidden within a complicated printed form. *Nagrampa*, 469 F.3d at 1280 (citing *Flores v. Transamerica HomeFirst, Inc.*, 93 Cal.App.4th 846, 853 (2001)).

In *Ajamian*, the court acknowledged that the arbitration agreement was procedurally unconscionable because the employee had already been working for her employer for 10 months and had no realistic bargaining power. *Ajamian v. CantorCO2e, L.P.*, 203 Cal. App. 4th 771, 796 (2012). She was required to sign the arbitration agreement to receive her promised compensation. *Id.*

Likewise, the MAA in this matter suffers from several procedural flaws which deem it unconscionable. Mr. Rife had already been working for Defendant for over two years at the time Defendant presented him with the MAA. Rife Decl., ¶¶ 2, 5. Rather than presenting Mr. Rife with an arbitration agreement when it offered Mr. Rife employment, Defendant, for unknown reasons, waited over two years to present Mr. Rife with an arbitration agreement. *Id.* Mr. Rife had no realistic bargaining power and did not have any meaningful choice regarding the MAA. *Id.*, ¶¶ 7, 9-10.

Additionally, the MAA conditioned Mr. Rife's eligibility for any future performance- and merit-based compensation increases and bonuses on his consent to the MAA. *See id.*, ¶ 6; Exh. A, p. 1 ("[M]y consent to the terms of this Mutual Arbitration Agreement ('Agreement') is a condition of my eligibility for any future performance-based compensation increases, including merit-based based salary increases, merit-based equity grants, and merit-based target bonus level changes."). Mr. Rife "had no realistic bargaining power." The MAA was an "adhesion contract, because it was based on a standardized form, drafted and imposed by a party of superior bargaining strength, and left [Mr. Rife] with only the option of adhering to the contract or rejecting it" and losing his performance- and merit-based compensation. *Ajamian*, 203 Cal. App. 4th at 796. Indeed, had he not signed the MAA, he would not have received his associated compensations with his promotion to systems engineer and senior systems engineer. Rife Decl., ¶¶ 7, 9-11; Complaint, ¶ 25.

Mr. Rife should not be forced into arbitration based upon an agreement in which he had no realistic bargaining power.

**B. The MAA Is Unenforceable Because It Is Substantively Unconscionable**

Defendant also argues that the MAA is not substantively unconscionable because it does not contain unreasonably or unexpectedly harsh terms. Mot. at 8. This assertion overlooks certain provisions within the MAA. Substantive unconscionability pertains to the fairness of an agreement's actual terms. *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal.4th 83, 120 (2000). "An arbitration provision is substantively unconscionable if it is 'overly harsh' or generates 'one-sided' results." *Nagrampa*, 469 F.3d at 1280 (citing *Armendariz*, 24 Cal.4th at 114).

While the MAA at issue here is mutually binding, there are provisions in the MAA that appear "overly harsh" and place an exorbitant burden on the employee. For instance, the MAA does not cover charges or complaints filed with a federal

administrative agency such as the Equal Employment Opportunity Commission (*see* Rife Decl., Exh. A, p. 1 ("Claims Not Covered by this Agreement"). Yet, to start the arbitration process, an employee is still required to exhaust the administrative charge or complaint procedure with the appropriate administrative agency before an arbitration demand can be filed. *Id.*, p. 2 ("How to Start the Arbitration Process; Time Limits for Commencing Arbitration"). An employee faces an unnecessary gatekeeping roadblock under the terms of the MAA when it comes to bringing discrimination claims under Title VII of the Civil Rights Act of 1964 or California's Fair Employment and Housing Act because he is still required to go through the appropriate administrative agency before he can initiate an arbitration demand. *See id.* ("In the case of a claim under a statute that requires filing of a charge or complaint with an administrative agency before commencing a lawsuit, that administrative charge or complaint procedure must be exhausted before a demand for arbitration is filed . . . ."). Each of Mr. Rife's discrimination claims required that he exhaust the administrative procedure before he could commence a lawsuit or an arbitration demand. *See* Complaint, ¶¶ 59-104; *see E.E.O.C. v. Dinuba Med. Clinic*, 222 F.3d 580, 585 (9th Cir. 2000) ("Title VII actions cannot proceed in federal court unless a charge of discrimination has first been filed with the EEOC."); *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th 88, 105 (2008) (holding that an employee may not proceed in court with a FEHA claim without first obtaining a right-to-sue letter from the Department of Fair Employment and Housing); Rife Decl., Exh. A, p. 2. However, while Mr. Rife is required to undertake the process of exhausting the administrative procedure related to his discrimination claims to initiate arbitration, under the MAA, Cerner has no similar administrative barrier to initiating an arbitration demand. The MAA presents a burden on an employee as it relates to certain claims, such as Mr. Rife's discrimination claims, but presents no similar burden on Cerner. As such, the MAA presents substantively unconscionable provisions, and Mr. Rife should not be forced into arbitration based upon an

agreement that places such a burden on his ability to bring his particular discrimination claims.

## V. CONCLUSION

For these reasons, Mr. Rife respectfully requests that this Court deny Defendant's Motion.

Respectfully submitted,

DATED: February 26, 2024

ADVOCATES FOR FAITH & FREEDOM

By: _____
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