

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Dan Rife, an individual,
Plaintiff,
v.
Cerner Corporation,
Defendant.

Case No.: 23CV2303-W-MMP

**ORDER GRANTING DEFENDANT’S
MOTION TO COMPEL
ARBITRATION [DOC. 7]**

Pending before the Court is Defendant Cerner Corporation’s Motion to Compel Arbitration for the above-entitled action. (*Mot. to Compel* [Doc. 7].) The Court decides the matter on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d)(1). For the reasons stated below, the Court **GRANTS** Cerner Corporation’s Motion to Compel Arbitration [Doc. 7].

I. BACKGROUND

On or around 2010, Plaintiff Dan Rife began working as a workstation technician for Palomar Health. (*Compl.* [Doc. 1] ¶ 22.) Approximately two years later, Defendant

1 Cerner Corporation purchased a contract with Palomar Health and then hired Mr. Rife
2 and other Palomar Health employees. (*Id.* at ¶ 23.) As of May 18, 2023, Mr. Rife was
3 working as a full-time workstation technician for Cerner Corporation. (*Id.* at ¶ 24.) In
4 2015, it promoted him to a Systems Engineer and eventually made him a Senior Systems
5 Engineer responsible for “creating, testing, and deploying operating system packages and
6 the application of packages to new and existing devices.” (*Id.* at ¶¶ 25, 26.)

7 After Mr. Rife was first promoted, he electronically signed a “Mutual Arbitration
8 Agreement” with Cerner Corporation on November 30, 2015. (*Kobler Decl.* [Doc. 7–2] ¶
9 9, *Ex. A* (the “MAA”) [Doc. 7–2] at 5.) The MAA was a “condition of [his] eligibility for
10 any future performance-based compensation increases, including merit-based base salary
11 increases, merit-based equity grants, and merit-based target bonus level changes.” (*MAA*
12 at 2.) Additionally, if Mr. Rife signed the MAA before December 8, 2015, he would be
13 eligible for a stock option grant valued at around \$500. (*Id.*)

14 The MAA states that all “Covered Claims” will be exclusively resolved in
15 arbitration and that both parties waive the right to a trial before a judge or jury for such
16 claims. (*MAA* at 2.) “Covered Claims” include all claims “brought under any statute,
17 regulation, law, local ordinance, contract, covenant (express or implied), or common law
18 relating to [Mr. Rife’s] employment with Cerner [Corporation].” (*Id.*) They specifically
19 cover claims concerning “disability or other accommodation, or termination of
20 employment.” (*Id.*) The MAA also has an arbitrator delegation provision that states that
21 the “Arbitrator will have exclusive authority to resolve disputes regarding the formation,
22 interpretation, applicability, enforceability, or implementation of this Agreement,
23 including claims that all or part of this Agreement is void or voidable.” (*Id.*) By signing
24 the MAA, Mr. Rife “acknowledge[d] and agree[d] that [he has] received, read, and
25 agree[d] to this Agreement.” (*Id.* at 5; *Opp’n* [Doc. 8] 2:22–23.)

26 Around July 2021, Cerner Corporation announced its COVID-19 vaccination
27 policy to comply with federal government mandates and promote workplace health.
28 (*Kobler Decl.* ¶ 10.) Mr. Rife claims that “vaccines developed using fetal cell lines that

1 descended from elective abortions in their development . . . or testing” are against his
2 Christian religious beliefs. (*Compl.* ¶ 19.) He also claims that he cannot ingest anything
3 which “could potentially harm his body.” (*Id.* at ¶ 20.) On or around August 27, 2021,
4 Mr. Rife explained these reasons in his “written request for a religious accommodation to
5 be exempted from [Cerner Corporation’s] vaccine mandates.” (*Id.* at ¶¶ 33–36.) Other
6 employees previously received “medical and religious accommodations” to the vaccine
7 mandates. (*Id.* at ¶ 50.)

8 Around September 2021, Mr. Rife met with Courtney Xiong—Cerner
9 Corporation’s Human Resources Senior Manager—to discuss the reasons for his
10 accommodation request. (*Compl.* at ¶¶ 37, 38.) On or about September 29, 2021, Ms.
11 Xiong denied his accommodation request, stating that it did “not qualify for an exemption
12 as a sincerely-held religious belief under Title VII of the Civil Rights Act or applicable
13 law.” (*Id.* at ¶¶ 39, 40.) Ms. Xiong informed him to begin the vaccination series by
14 September 30, 2021, or otherwise “be subject to disciplinary action, up to and including
15 termination.” (*Id.* at ¶ 41.) Mr. Rife did not comply with Cerner Corporation’s vaccine
16 mandate, and on or around November 2, 2021, he was terminated. (*Id.* at ¶¶ 52, 53.)

17 Palomar Health eventually hired Mr. Rife back as a contractor around January
18 2022, and it approved his religious accommodation request from its COVID-19
19 vaccination policy. (*Compl.* at ¶ 54.) It then made him a full-time employee around
20 August 2022, again approving his religious accommodation request. (*Id.* at ¶ 55.)

21 On August 15, 2022, Mr. Rife filed a complaint of religious discrimination with
22 the Equal Employment Opportunity Commission (“EEOC”), which issued him a right-to-
23 sue letter on September 22, 2023. (*Compl.* at ¶¶ 56–58.) The EEOC “found reasonable
24 cause to believe that violations of the statute(s) occurred with respect to some or all of the
25 matters alleged in the charge.”¹ (*Id.* at ¶ 57.)

26
27
28 ¹ Mr. Rife contends that he also filed a complaint with California’s Department of Fair Employment and
Housing, which issued him a right-to-sue letter on August 24, 2022. (*Compl.* at ¶¶ 57, 58.)

1 On December 18, 2023, Mr. Rife filed a Complaint against Cerner Corporation
2 alleging several federal and state employment-related claims stemming from his
3 November 2021 termination and the preceding events. (*Compl.* at ¶¶ 1, 2, 53.) On
4 February 2, 2024, Cerner Corporation filed this Motion to Compel Arbitration for Mr.
5 Rife’s claims, seeking to enforce his signed MAA from November 30, 2015. (*P&A* [Doc.
6 7–1] 2:4–10.)

7

8 **II. LEGAL STANDARD**

9 The Federal Arbitration Act (“FAA”) provides:

10 A written provision in any . . . contract evidencing a transaction
11 involving commerce to settle by arbitration a controversy thereafter
12 arising out of such contract or transaction, or the refusal to perform
13 the whole or any part thereof, . . . shall be valid, irrevocable, and
14 enforceable, save upon such grounds as exist at law or in equity for
the revocation of any contract.

15 9 U.S.C. § 2.

16 “A party seeking to compel arbitration has the burden under the FAA to show
17 (1) the existence of a valid, written agreement to arbitrate; and, if it exists, (2) that the
18 agreement to arbitrate encompasses the dispute at issue.” *Ashbey v. Archstone Prop.*
19 *Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015). “The ‘principal purpose’ of the FAA is
20 to ‘ensur[e] that private arbitration agreements are enforced according to their
21 terms.’” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (quoting *Volt*
22 *Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)).
23 “Any doubts concerning the scope of arbitrable issues should be resolved in favor of
24 arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25
25 (1983).

26 When ruling on a motion to compel arbitration, the court applies a standard similar
27 to that found in Federal Rule of Civil Procedure 56. *See Concat LP v. Unilever, PLC*,
28 350 F. Supp. 2d 796, 804 (N.D. Cal. 2004). “Before a party to a lawsuit can be ordered

1 to arbitrate and thus be deprived of a day in court, there should be an express,
2 unequivocal agreement to that effect. If there is doubt as to whether such an agreement
3 exists, the matter, upon a proper and timely demand, should be submitted to a
4 jury.” *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1141 (9th
5 Cir. 1991) (quoting *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co.*, 636 F.2d 51, 54 (3d
6 Cir. 1980)).

7 8 **III. DISCUSSION**

9 There is no dispute that Mr. Rife signed the MAA. (*Opp’n* 2:22–23.) Both parties
10 also agree that the FAA governs the MAA, a copy of which is attached to Ms. Erin
11 Kobler’s declaration. (*Id.* at 2:5–7; *P&A* 3:12; *Kobler Decl.* ¶ 9, *MAA*.) Cerner
12 Corporation has therefore met its minimal burden of proof that a contract exists by
13 attaching “a copy of the purported arbitration agreement bearing [the plaintiff’s]
14 signature.” *Espejo v. S. Cal. Permanente Med. Grp.*, 201 Cal. Rptr. 3d 318, 327 (2016).

15 However, Mr. Rife argues that the MAA is unenforceable because it is
16 procedurally and substantively unconscionable. (*Opp’n* 1:10, 17.) Cerner Corporation
17 responds that any question about the MAA’s enforceability is solely “for the arbitrator to
18 resolve.” (*Reply* 1:26 [Doc. 9].) It relies on the “Mutual Agreement to Arbitrate; Claims
19 Covered by the Agreement” section of the MAA, which contains the arbitrator delegation
20 provision. (*MAA* at 2.) The provision states that the parties “agree that the Arbitrator
21 will have exclusive authority to resolve disputes regarding the formation, interpretation,
22 applicability, enforceability, or implementation of this Agreement, including claims that
23 all or part of this Agreement is void or voidable.” (*Id.*) Mr. Rife’s arguments do not
24 address this delegation provision. Instead, his opposition focuses on the alleged
25 unconscionability of the MAA as a whole. (*Opp’n* 1:10, 17.)

26 Unlike controversies over the scope of arbitrable issues, gateway issues of
27 arbitrability are presumptively reserved for courts. *Momot v. Mastro*, 652 F.3d 982, 986,
28 988 (9th Cir. 2011) (“Accordingly, the question of arbitrability is left to the court unless

1 the parties clearly and unmistakably provide otherwise.”). However, “a party’s challenge
2 to another provision of the contract, or to the contract as a whole, does not prevent a court
3 from enforcing a specific agreement to arbitrate.” *Rent-A-Center, W., Inc. v. Jackson*,
4 561 U.S. 63, 70 (2010). In *Rent-A-Center*, the Court held that “unless [the plaintiff]
5 challenge[s] the delegation provision specifically, we must treat it as valid under § 2 [of
6 the FAA], and must enforce it under §§ 3 and 4, leaving any challenge to the validity of
7 the Agreement as a whole for the arbitrator.” *Id.* at 72.

8 Here, like the plaintiff in *Rent-A-Center*, Mr. Rife challenges only the
9 enforceability of the MAA as a whole. Specifically, he argues that the MAA is
10 procedurally unconscionable because he had “already been working for [Cerner
11 Corporation] for over two years at the time [Cerner Corporation] presented him with the
12 MAA.” (*Opp’n* 4:23–24.) He further contends that he “had no realistic bargaining power
13 and did not have any meaningful choice regarding the MAA.” (*Id.* at 4:27–28.) These
14 procedural unconscionability arguments challenge the general enforceability of the
15 contract and do not go specifically “to the validity of the delegation provision.” *Rent-A-*
16 *Center*, 561 U.S. at 72.

17 Regarding the alleged substantive unconscionability of the MAA, Mr. Rife argues
18 the agreement unfairly requires employees to “go through the appropriate administrative
19 agency” before initiating arbitration for claims under Title VII of the Civil Rights Act of
20 1964 and under California’s Fair Employment and Housing Act. (*Opp’n* at 6:8–10.) He
21 contends this is an “unnecessary gatekeeping roadblock” for him to commence
22 arbitration. (*Id.* at 6:6–7, 14–16.) As with the plaintiff in *Rent-A-Center*, Mr. Rife is
23 focusing on the procedural unconscionability of the agreement as a whole and does not
24 even mention the delegation provision in his arguments. 561 U.S. at 72.

25 Absent a specific challenge to the delegation provision, the parties “clearly and
26 unmistakably” intended to delegate the question of the MAA’s enforceability to the
27 arbitrator. *See Momot*, 652 F.3d at 986, 988 (“the question of arbitrability is left to the
28

1 court unless the parties clearly and unmistakably provide otherwise.”). The Court’s
2 inquiry therefore ends here, and the arbitrator must decide the enforceability of the MAA.

3

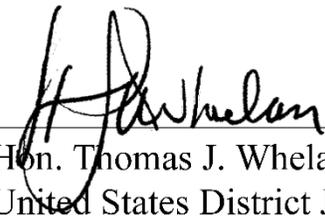
4 **IV. CONCLUSION AND ORDER**

5 For the foregoing reasons, Defendant Cerner Corporation’s Motion to Compel
6 Arbitration is **GRANTED** [Doc. 7].

7 **IT IS SO ORDERED.**

8 Dated: September 12, 2024

9



Hon. Thomas J. Whelan
United States District Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28