

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

LILA SUTHERLAND, an individual,
Plaintiff,
v.
AMERIFIRST FINANCIAL, INC., an
Arizona corporation, and DOES 1-25,
Defendants.

Case No.: 16cv01676-JAH (WVG)

**ORDER (1) DENYING MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION; (2)
GRANTING MOTION TO
TRANSFER VENUE; AND (3)
DENYING AS MOOT MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM [DOC. NO. 4]**

INTRODUCTION

Pending before the Court is Defendant AmeriFirst Financial, Inc.’s (“Defendant”) motion to transfer this matter to the United States District Court for the District of Arizona, and compel arbitration of Plaintiff Lila Sutherland’s (“Plaintiff”) dispute in Maricopa County, Arizona, pursuant to the Federal Arbitration Act, 9 U.S.C. §§1 *et seq* (the “FAA”). *See* Doc. No. 4. Alternatively, Defendant moves this Court for an order dismissing Plaintiff’s Complaint for lack of personal jurisdiction or failure to state a claim. *Id.* Defendant’s motion has been fully briefed by the parties. *See* Doc. Nos. 5, 6. After careful consideration of the pleadings, relevant exhibits, and for the reasons set forth below, the Court (1) **DENIES** Defendant’s motion to dismiss for lack of personal jurisdiction; (2)

1 **GRANTS** Defendant's motion to transfer venue to the District of Arizona for all further
2 proceedings; and (3) **DENIES AS MOOT** Defendant's motion to dismiss for failure to
3 state a claim.

4 **BACKGROUND**

5 This matter arises from events preceding the termination of Plaintiff's employment
6 with Defendant. *See* Doc. No. 4-1 at 2. Defendant employed Plaintiff from April 6, 2011
7 until July 1, 2015. *Id.* During her employment, Plaintiff worked, at-will, as an Executive
8 Assistant and Human Resources Generalist in Defendant's branch office, located in Del
9 Mar, California. *Id.* On or about March 26, 2015, Plaintiff signed and acknowledged an
10 Employee Handbook distributed to Defendant's California employees. *See* Doc. No. 4-4.
11 The Handbook contains, in part, the following dispute resolution provision:

12 **Arbitration Agreement.** Except as provided below, if we cannot
13 reach a mutually agreeable solution within 60 days you and
14 AmeriFirst agree that all disputes, claims, questions, or
15 differences you have, or in the future may have, against
16 AmeriFirst or its officers, directors, shareholders, employees or
17 agents which arise out of or relate to your employment or
18 separation from employment with AmeriFirst, and all legally
19 protected employment-related claims that AmeriFirst has, or in
20 the future may have, against you will be resolved exclusively by
21 final and binding arbitration. Claims subject to arbitration
22 include, without limitation, claims for breach of any express or
23 implied contract; discrimination, harassment, or retaliation;
24 wages, overtime, benefits, or other compensation; violation of
25 public policy; personal injury; and tort claims including
26 defamation, fraud, intentional infliction of emotional distress,
27 intentional interference with business expectancy, breach of duty
28 of loyalty and fiduciary duty, unfair competition, and
misappropriation. **Except as expressly provided herein,
AmeriFirst and you voluntarily waive all right to trial in state
or federal court before a judge or jury on all claims between
them.**

27 *See* Doc. No. 4-4 at 9 (emphasis in original). The same page of the Handbook includes a
28 general explanation of the arbitration process, and an overview of the notice requirements

1 necessary before commencing arbitration. *Id.* On July 1, 2015, Defendant terminated
2 Plaintiff’s employment at-will. *See* Doc. No. 5 at 3. Plaintiff subsequently filed suit in San
3 Diego County Superior Court, on March 17, 2016, alleging claims for (1) failure to pay
4 overtime wages; (2) failure to pay wages, including minimum wages; (3) failure to
5 reimburse employee expenses; (4) failure to provide meal periods; (5) failure to provide
6 rest periods; (6) unfair competition; (7) failure to timely pay wages; (8) knowing and
7 intentional failure to comply with itemized employee wage statement provisions; and (9)
8 statutory penalties, pursuant to the Private Attorney General Act, Cal. Labor Code §§ 2633
9 *et seq.* *See* Doc. No. 1-3 at 3. Defendant removed to this Court on the basis of diversity
10 jurisdiction. *See* Doc. No. 1. Defendant then filed the instant motion to transfer venue and
11 compel arbitration, or, in the alternative, to dismiss the Complaint pursuant to Rules
12 12(b)(2) or 12(b)(6). *See* Doc. No. 4. Plaintiff filed an opposition on August 15, 2016, and
13 Defendant replied on August 22, 2016. *See* Doc. No. 5, 6. On August 22, 2016, the Court
14 deemed the matter suitable for disposition without oral argument, and took the matter under
15 submission. *See* Doc. No. 7 (citing CivLR 7.1(d)(1)).

16 DISCUSSION

17 **I. Legal Standards**

18 **a. Personal Jurisdiction**

19 Under Federal Rule of Civil Procedure 12(b)(2), a court may dismiss a case for “lack
20 of jurisdiction over the person.” Fed. R. Civ. P. 12(b)(2). The Ninth Circuit has established
21 a two prong test for determining if the Court’s assertion of personal jurisdiction is proper:
22 (1) “jurisdiction must comport with the state long-arm statute,” and (2) comport “with
23 the constitutional requirement of due process.” *Mattel, Inc., v. Greiner & Hausser GMBH*,
24 354 F.3d 857, 863 (9th Cir. 2003) (quoting *Ziegler v. Indian River County*, 64 F.3d 470,
25 473 (9th Cir. 1995)).

26 As to the first prong, California’s long arm statute provides that “a court of this state
27 may exercise jurisdiction on any basis not inconsistent with the Constitution of this State
28 or of the United States.” Cal. Civ. Proc. Code § 410.10. Because California law allows the

1 exercise of jurisdiction to the same extent as due process under the United States
2 Constitution, the only question is whether the exercise of jurisdiction over the defendant is
3 constitutional. *Mattel*, 354 F.3d at 863. Under a due process analysis, the Court may only
4 exercise jurisdiction in accord with “traditional notions of fair play and substantial justice,”
5 thus the nonresident defendant is required to have “certain minimum contacts” with the
6 forum state in order for jurisdiction to be proper. *Id.* (quoting *International Shoe Co. v.*
7 *Washington*, 326 U.S. 310, 316 (1945)).

8 Personal jurisdiction may be found where the defendant’s activities subject him to
9 either general or specific jurisdiction. General jurisdiction exists where a nonresident
10 defendant’s activities within a state are “substantial” or “continuous and systematic.” *Data*
11 *Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977). In
12 the absence of general jurisdiction, a nonresident defendant may still be sued in the forum
13 if specific jurisdiction exists. *Id.* The Ninth Circuit has established a three-part test to
14 determine whether there is specific jurisdiction over a defendant:

15 ‘Specific’ jurisdiction exists if (1) the defendant has performed
16 some act or consummated some transaction within the forum or
17 otherwise purposefully availed himself of the privilege of
18 conducting activities in the forum, (2) the claim arises out of or
19 results from the defendant’s forum-related activities, and (3) the
exercise of jurisdiction is reasonable.

20 *Mattel*, 354 F.3d at 863 (quoting *Bancroft & Masters v. Augusta Nat. Inc.*, 223 F.3d 1082,
21 1086 (9th Cir. 2000)). The Court must assess the contacts of each defendant separately to
22 determine whether personal jurisdiction exists for each particular defendant. *See Harris*
23 *Rutsky & Co. Ins. Servs. Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1130 (9th Cir. 2003);
24 *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990); *Gutierrez v. Givens*, 1 F. Supp.2d
25 1077, 1083 n. 1 (S.D. Cal. 1998).

26 Plaintiff bears the burden of making a *prima facie* showing that jurisdiction is proper.
27 *Mattel*, 354 F.3d at 862 (citing *Harris Rutsky*, 328 F.3d at 1128). Although plaintiff need
28 only make a *prima facie* showing that personal jurisdiction exists, plaintiff “cannot ‘simply

1 rest on the bare allegations of its complaint.” *Id.* (internal citation omitted); *see also Ochoa*
2 *v. J.B. Martin and Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir. 2001). “To make that
3 showing, [plaintiff] need only demonstrate facts that, if true, would support jurisdiction
4 over the [d]efendants.” *Id.* “Conflicts between the facts contained in the parties’ affidavits
5 must be resolved in [plaintiff’s] favor for purposes of deciding whether a *prima facie* case
6 for personal jurisdiction exists.” *Gator.com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1075-
7 76 (9th Cir. 2003) (quoting *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th
8 Cir. 1996); *see also Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001).

9 **b. Failure to State a Claim**

10 A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the complaint.
11 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under Rule
12 12(b)(6) where the complaint lacks a cognizable legal theory. *See Robertson v. Dean Witter*
13 *Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *Neitzke v. Williams*, 490 U.S. 319, 326
14 (1989) (“Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive
15 issue of law”). Alternatively, a complaint may be dismissed where it presents a cognizable
16 legal theory yet fails to plead essential facts under that theory. *Robertson*, 749 F.2d at 534.
17 While a plaintiff need not give “detailed factual allegations,” he must plead sufficient facts
18 that, if true, “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v.*
19 *Twombly*, 550 U.S. 544, 545 (2007).

20 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
21 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
22 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 547). A claim is facially
23 plausible when the factual allegations permit “the court to draw the reasonable inference
24 that the Defendant is liable for the misconduct alleged.” *Id.* In other words, “the non-
25 conclusory ‘factual content,’ and reasonable inferences from that content, must be
26 plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*,
27 572 F.3d 962, 969 (9th Cir. 2009). “Determining whether a complaint states a plausible
28

1 claim for relief will . . . be a context-specific task that requires the reviewing court to draw
2 on its judicial experience and common sense.” *Iqbal*, 129 S. Ct. at 1950.

3 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the
4 truth of all factual allegations and must construe all inferences from them in the light most
5 favorable to the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002);
6 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). However, legal
7 conclusions need not be taken as true merely because they are cast in the form of factual
8 allegations. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003); *Western Mining*
9 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). When ruling on a motion to dismiss, a
10 court may consider the facts alleged in the complaint, documents attached to the complaint,
11 documents relied upon but not attached to the complaint when authenticity is not contested,
12 and matters of which a court takes judicial notice. *Lee v. City of Los Angeles*, 250 F.3d 668,
13 688-89 (9th Cir. 2001). If a court determines that a complaint fails to state a claim, the
14 court should grant leave to amend unless it determines that the pleading could not possibly
15 be cured by the allegation of other facts. *See Doe v. United States*, 58 F.3d 494, 497 (9th
16 Cir. 1995).

17 **II. Analysis**

18 **a. Personal Jurisdiction**

19 Defendant argues that this Court lacks personal jurisdiction over it. *See* Doc. No. 4-
20 1 at 16. The Court has reviewed the issue, and finds that Plaintiff makes a *prima facie*
21 showing that this Court may properly exercise jurisdiction over Defendant. *See Homestake*
22 *Lead Co. of Missouri v. Doe Run Resources Corp.*, 282 F.Supp.2d 1131, 1134 (2003).

23 Indeed, it is undisputed that Defendant maintained a branch office in Del Mar,
24 California for over four years, and Plaintiff worked at that branch. *See* Doc. No. 4-1 at 7.
25 The Court finds that these undisputed facts, standing alone, are sufficient to support
26 “continuous and systematic contacts” with the forum state, notwithstanding Plaintiff’s
27 additional allegations about Defendant’s longstanding business registration with the
28 California Secretary of State. *See Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163,

1 1171 (9th Cir. 2006). The Court further finds that Defendant has not demonstrated the
2 presence of other factors that would render the finding of jurisdiction unreasonable. *See*
3 *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998).
4 Thus, the Court finds the exercise of jurisdiction is in accord with “traditional notions of
5 fair play and substantial justice.” *See Mattel*, 354 F.3d at 863 (quoting *International Shoe*
6 *Co. v. Washington*, 326 U.S. 310, 316 (1945)). Defendant’s motion to dismiss the
7 Complaint pursuant to Rule 12(b)(2) is, therefore, **DENIED**.

8 **b. Failure to State a Claim**

9 Defendant contends that the arbitration agreement prohibits Plaintiff from stating a
10 claim upon which this Court can grant relief because the parties agreed that “all disputes,
11 claims, questions, or differences” arising from Plaintiff’s employment or separation would
12 be resolved by binding arbitration, instead of before a state or federal court. *See* Doc. No.
13 4-4 at 8-10. Specifically, Defendant argues that all of Plaintiff’s causes of action relate to,
14 derive from, and arise in connection with her employment relationship with Defendant,
15 and fall squarely within the scope of the arbitration agreement. *See* Doc. No. 4-1 at 7. In
16 opposition, Plaintiff argues that the Complaint states a claim upon which this Court can
17 grant relief because the arbitration agreement is unenforceable. *See* Doc. No. 5.
18 Specifically, Plaintiff argues that the arbitration clause she agreed to is unconscionable,
19 lacks mutuality, and, therefore, should be set aside. *See* Doc. No. 5 at 14. In reply,
20 Defendant maintains that the arbitration agreement is enforceable, and, in the event that the
21 Court makes a finding to the contrary, any unenforceable provision(s) of the contract is
22 severable. *See* Doc. No. 6 at 2, 10.

23 Drawing all inferences in the light most favorable to Plaintiff, and for the reasons
24 set forth below, the Court finds Defendant’s argument availing. For the following reasons,
25 the Court finds that the subject arbitration agreement is valid, that the agreement includes
26 the dispute at issue, and the parties’ agreement to arbitrate Plaintiff’s dispute should be
27 enforced.

28 //

1 **i. Arbitrability**

2 The FAA governs the question of arbitrability. *See* 9 U.S.C. § 4. Arbitration is a
3 matter of contract and courts cannot require a party to arbitrate unless that party has agreed
4 to do so. *United Steelworkers of America v. Warrior & Gulf*, 363 U.S. 574, 582 (1960).
5 The court’s role is limited to determining whether a valid agreement exists and, if it does,
6 deciding whether the agreement includes the dispute at issue. *Chiron Corp. v. Ortho*
7 *Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). If the finding is affirmative on
8 both counts, the court is required by the FAA to enforce the terms of the arbitration
9 agreement. *Id.* Doubts as to whether the arbitration clause covers the dispute at issue should
10 be resolved in favor of coverage. *Warrior & Gulf*, 363 U.S. at 582-83. Clauses requiring
11 arbitration of claims “arising out of or relating to” a contract are considered broad. *Prima*
12 *Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967). The preference for
13 arbitration is particularly strong when the arbitration clause is broad. *AT&T Technologies,*
14 *Inc. v. Communications Workers of America*, 475 U.S. 643, 650 (1986).

15 **1. The Subject Arbitration Agreement is Valid**

16 “The FAA does not apply until the existence of an arbitration agreement is
17 established under state law principles involving formation, revocation and enforcement of
18 contracts generally.” *Cione v. Fosters Equity Services, Inc.*, 58 Cal. App. 4th 625, 634
19 (1997). The party seeking to compel arbitration bears the burden of proving the existence
20 of a valid arbitration agreement. *Fagelbaum & Heller LLP v. Smylie*, 174 Cal. App. 4th
21 1351, 1363 (2009).

22 Defendant contends that the subject arbitration agreement is valid and enforceable
23 because Plaintiff knowingly and voluntarily agreed to the terms and conditions contained
24 in the Employee Handbook, which included the arbitration agreement. *See* Doc. No. 4-1 at
25 1, 3. In opposition, Plaintiff argues that the agreement she signed is invalid because the
26 arbitration clause’s adhesive nature, and position within the larger Employee Handbook,
27 constitutes unfair surprise, rising to the level of unconscionability. *See* Doc. No. 5 at 11. In
28 reply, Defendant (1) argues that the agreement’s adhesive nature does not make it

1 unconscionable, and therefore, invalid, [*see* doc. no. 6 at 2]; and (2) maintains that the
2 record includes no evidence of surprise or oppression that would make the agreement
3 procedurally unconscionable. *See* Doc. No. 6 at 3. Drawing all reasonable inferences in the
4 light most favorable to Plaintiff, the Court finds Plaintiff’s unconscionability arguments
5 unavailing. A valid arbitration agreement exists.

6 It is undisputed that, on March 26, 2015, Plaintiff signed and acknowledged her
7 receipt, understanding of, and agreement to be bound by, the Employee Handbook
8 containing the subject arbitration agreement, and the document entitled “Dispute
9 Resolution Policy Acknowledgement.” *See* Doc. No. 4-4 at 50; Doc No. 5 at 3. Plaintiff
10 nevertheless argues that the arbitration agreement is unenforceable because Defendant’s
11 method of obtaining her consent was procedurally unconscionable. The Court disagrees.

12 In California, procedural unconscionability refers to “the manner in which the
13 contract was negotiated and the circumstance of the parties at the time.” *A & M Produce*
14 *Co. v. FMC Corp.*, 135 Cal. App. 3d 473, 486 (1982). It has two components, oppression
15 and surprise. *Kinney v. United Healthcare Services, Inc.*, 70 Cal. App 4th 1322, 1329
16 (1999). Oppression arises from inequality of bargaining power resulting from a lack of
17 negotiation and the absence of meaningful choice on the part of the weaker party. *A & M*,
18 135 Cal. App. 3d at 486. Oppression may be established by showing that the contract was
19 one of adhesion or that the “totality of the circumstances” surrounding the negotiation and
20 formation of the contract were oppressive. *Poulon v. C.H. Robinson Company*, 846 F.3d
21 1251, 1348 (9th Cir. 2017). California courts have found that the adhesive nature of the
22 contract may establish some degree of unconscionability, but have not adopted a rule that
23 an adhesion contract is *per se* unconscionable. *Sanchez v. Valencia Holding Co., LLC*, 61
24 Cal. 4th 899, 914-15 (2015).

25 In the employment context, if an employee is required to sign a non-negotiable
26 agreement as a condition of employment, but “there is no other indication of oppression or
27 surprise,” then “the agreement will be enforceable unless the degree of substantive
28

1 unconscionability¹ is high.” *Serpa v. Cal. Sur. Investigations, Inc.*, 215 Cal. App. 4th 695,
2 704 (2013).

3 Plaintiff filed opposition to Defendant’s motion on August 15, 2016. *See* Doc. No.
4 5. In support, Plaintiff included a declaration supplying her recollection of the events
5 leading up to Defendant obtaining her signed acknowledgement of the Employee
6 Handbook, and the subject arbitration agreement. *See* Doc. No. 5-1. Plaintiff declares that
7 her at-will employment as an Executive Assistant and Human Resources Generalist began
8 “[i]n or around June 2011” and at the time of hiring, she was not required to sign any type
9 of arbitration clause or similar agreement. *Id.* at 2. Plaintiff further testified that “[a]fter
10 many years of working for AFI in California, I recall being e-mailed documents regarding
11 an updated employee handbook for AFI’s California employees[.]” *Id.* Plaintiff recalls that
12 employees in receipt of the new Employee Handbook were “encouraged” to sign the
13 agreement “by a certain date[.]” *Id.* The specific due date is not indicated. However,
14 Plaintiff recalls that “there was a rush to get the handbook signed by all employees[;]” and
15 that signing it was required by California workers, as a condition of continued employment.
16 *Id.*

17 Exhibit A of Plaintiff’s declaration includes a copy of the “General Handbook
18 Acknowledgement” signed by Plaintiff on March 26, 2015. The signed acknowledgement
19 indicates that Plaintiff “received and read a copy of AmeriFirst’s Employee Handbook”
20 and understood that her signature “indicates that I have read and understand the above
21

22
23 ¹ Agreements that are substantively unconscionable must contain “terms that impair
24 the bargaining process,” terms that “contravene the public interest or public policy,” terms
25 that “alter in an impermissible manner fundamental duties otherwise imposed by the law,”
26 “fine-print terms,” or “provisions that seek to negate the reasonable expectations of the
27 nondrafting party.” *Baltazar v. Forever 21, Inc.*, 62 Cal. 4th 1237, 1244-45 (Cal. 2016)
28 (quoting *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal. 4th 1109, 1145). The doctrine of
substantive unconscionability exists to ensure that contracts do not impose terms that are
“overly harsh,” “unduly oppressive,” “so one-sided as to shock the conscience, or “unfairly
one-sided.” *Id.* at 1244.

1 statements and that I have received a copy of the Company’s Employee Handbook.” *See*
2 Doc. No. 5-1 at 7. Notwithstanding the signed acknowledgement of her understanding,
3 Plaintiff declares that she did not understand what she signed because Defendant failed to
4 provide additional documentation or explanation as to various parts of the Employee
5 Handbook. *See id.* at 2. For example, Plaintiff indicates that “at no time did anyone from
6 AFI explain to me what arbitration was, what the ‘AAA’ was, what the ‘AAA’ rules were,
7 or any of the terms.” *Id.* Plaintiff does not allege, or otherwise indicate, that she
8 communicated her lack of understanding with Defendant, or sought to negotiate the
9 amended terms of her employment outlined in the Employee Handbook, or that the terms
10 were oppressive. Instead, Plaintiff’s declaration indicates that she signed and returned the
11 acknowledgement despite her apparent unawareness of the Handbook’s content and
12 adhesive nature. *See generally* Doc. No. 5-1.

13 In light of the entire record, which includes no allegation that the arbitration
14 agreement was non-negotiable, the Court finds that Plaintiff has not shown facts sufficient
15 to support a procedural unconscionability finding. The Court additionally finds the degree
16 of substantive unconscionability low. *Serpa v. Cal. Sur. Investigations, Inc.*, 215 Cal. App.
17 4th 695, 704 (2013). Indeed, looking to the language of subject documents, the Court
18 notices no term which shocks the conscience, contravenes public policy, or otherwise
19 impermissibly alters the fundamental duties imposed by law. *See* Doc. No. 4-4 at 1-47
20 (AmeriFirst California Employee Handbook; General Handbook Acknowledgement; and
21 Dispute Resolution Policy Acknowledgement). Accordingly, the Court finds that the
22 arbitration agreement is valid.

23 **2. The Arbitration Agreement Includes the Dispute at Issue**

24 To trigger an arbitration requirement, the movant’s factual allegations need only
25 “touch matters” covered by the contract containing the arbitration clause. *See Mitsubishi*
26 *Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 624 (1985). Once the
27 arbitration clause is triggered, the court must allow arbitration “even where the result would
28

1 be the possibility of inefficient maintenance of separate proceedings in different forums.”
2 *Dean Witter Reynolds, Inc. v. Boyd*, 470 U.S. 213, 217 (1985).

3 Here, Defendant’s factual allegations, as well as Plaintiff’s Complaint, leaves little
4 doubt that the matter before the Court “touch[es] matters” covered by the arbitration
5 agreement. *See* Doc. Nos. 4, 5. Indeed, Plaintiff brings various claims alleging, *inter alia*,
6 wage & hour violations arising from her employment as an Executive Assistant and Human
7 Resources Generalist, and Defendant alleges those claims fall squarely within the scope of
8 the arbitration agreement. *See generally* Doc. No. 1; *see also* Doc. No. 1-3 at 3; *Cf* Doc.
9 No. 4-4 at 9 (indicating that the arbitration agreement includes, “without limitation, claims
10 for . . . wages, overtime, benefits, or other compensation[.]”). The Court finds that the
11 arbitration agreement includes the dispute at issue.

12 **ii. Transfer**

13 In the arbitration agreement, the parties agreed upon venue in Maricopa County,
14 Arizona. In this Court’s view, Section 4 of the FAA does not permit this Court to compel
15 arbitration outside of the Southern District of California. *See Continental Grain Co. v. Dant*
16 *& Russell*, 11 F.2d 967, 969 (9th Cir. 1941) (holding that a district court may compel
17 arbitration only “within the district in which the petition for an order directing such
18 arbitration is filed.”). Instead, the appropriate remedy is to transfer this case to the District
19 of Arizona. *See* 28 U.S.C § 1404(a) (authorizing a district court to transfer any civil action
20 to any other district or division where it might have been brought or to any district or
21 division to which all parties have consented.).

22 **CONCLUSION AND ORDER**

23 For the foregoing reasons, the Court (1) **DENIES** Defendant’s motion to dismiss for
24 lack of personal jurisdiction; (2) **GRANTS** Defendant’s motion to transfer venue; and (3)
25 **DENIES AS MOOT** Defendant’s motion to dismiss for failure to state a claim.

26 The Clerk of Court is directed to **TRANSFER** this case to the United States District
27 Court for the District of Arizona for all further proceedings.

28 //

IT IS SO ORDERED.

DATED: September 25, 2017

A handwritten signature in black ink, appearing to read "John A. Houston", written over a horizontal line.

JOHN A. HOUSTON
United States District Judge

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