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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOEY TATE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PROGRESSIVE FINANCE
HOLDINGS, LLC,

Defendant.

Case No. 2:17-cv-01589-ODW (ASx)

**ORDER GRANTING MOTION TO
COMPEL ARBITRATION AND
DISMISS PROCEEDINGS [15]**

I. INTRODUCTION

On June 2, 2017, Defendant Progressive Finance Holdings, LLC moved to compel arbitration, and to either dismiss or stay these proceedings pending the outcome of arbitration. (Mot., ECF No. 15.) Plaintiff Joey Tate opposes the Motion, and claims that the arbitration clause at issue does not encompass the dispute alleged in his Complaint. (Opp'n, ECF No. 18.) Tate brings two causes of action based on Progressive's allegedly illegal debt collection practices, which utilized an automatic telephone dialing system. (*See generally* Compl., ECF No. 1.)

After briefing closed on this Motion, Tate objected because Progressive included additional evidence in its Reply brief, and moved the Court for leave to file a sur-reply. (ECF No. 21.) The Court granted Tate's Motion for Leave to File Sur-Reply, and considered Tate's Sur-Reply in reaching its conclusion here. (ECF No.

1 24.) For the reasons discussed below, the Court **GRANTS** Progressive’s Motion to
2 Compel Arbitration, and **DISMISSES** this action.¹

3 **II. FACTUAL BACKGROUND**

4 Tate’s Complaint lacks any factual detail, and alleges, generally, that: 1)
5 “Defendant placed calls to plaintiff’s Number in an attempt to collect a debt” (Compl.
6 ¶ 12); 2) the calls “were placed using an automatic telephone dialing system
7 (“ATDS”) and/or by using an artificial or pre[-]recorded voice (“Robocalls”)” (*Id.*
8 ¶ 13); 3) Progressive left messages on Tate’s answering system; and 4) that all of this
9 was done without Tate’s consent, and “at an excessive and harassing rate.” (*Id.* ¶ 14–
10 16.) Tate does not allege what the debt at issue relates to, other than to allege that it
11 “arises from a transaction in which property, services or money was acquired on credit
12 primarily for personal, family or household purposes....” (*Id.* ¶ 9.)

13 Progressive contends the debt arises out of a Lease with Purchase Rights
14 between Tate and Progressive dated August 8, 2014 (the “August Lease”), under
15 which Tate agreed to lease a laptop. (Mot. 1; Decl. of Trevor Thatcher (“Thatcher
16 Decl.”) ¶ 3, Ex. A, ECF No. 15-1.) The first paragraph of the August Lease provides:

17 **THIS LEASE CONTAINS AN ARBITRATION PROVISION (SEE ¶13**
18 **OF THE ADDITIONAL LEASE TERMS). UNLESS YOU**
19 **PROMPTLY REJECT THE ARBITRATION PROVISION (SEE**
20 **¶13(a) OF THE ADDITIONAL LEASE TERMS), THE**
21 **ARBITRATION PROVISION WILL HAVE A SUBSTANTIAL**
22 **EFFECT ON YOUR RIGHTS IN THE EVENT OF A DISPUTE,**
23 **INCLUDING YOUR RIGHT TO BRING OR PARTICIPATE IN A**
24 **CLASS PROCEEDING.**

25 (Thatcher Decl., Ex. A at 2) (emphasis in original); *see also id.*, Ex. A, § 13(f)). The
26 August Lease also provided Tate thirty days to reject the arbitration clause. (*Id.*, Ex.

27 _____
28 ¹ After carefully considering the papers filed with respect to this Motion the Court deems the matter
appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 A, § 13(a).) It also explained that “this is the only way you can reject arbitration[,]”
2 and that rejecting the arbitration provision would “not affect your right to this Lease or
3 the terms of this Lease apart than this Arbitration Provision.” (*Id.*) Tate did not reject
4 the arbitration clause. (Thatcher Decl. ¶¶ 4–5.)

5 Section 13 of the August Lease provides that Tate and Progressive “agree that
6 either party may elect to arbitrate or require arbitration of any Claim under this
7 Arbitration provision.” (*Id.*, Ex. A, § 13(a)(i).) In the August Lease, “Claim” is
8 defined as:

9 any claim, dispute or controversy between you and us (including any
10 Related Party) that arises from or relates in any way to this Lease or the
11 Property (including any amendment, modification or extension of this
12 Lease); *any prior lease between you and us and/or the property subject to*
13 *such prior lease; any of our marketing, advertising, solicitations and*
14 *conduct relating to this Lease, the Property and/or a prior lease and related*
15 *property; our collection of any amounts you owe; or our disclosure of or*
16 *failure to protect any information about you. “Claim” is to be given the*
17 *broadest reasonable meaning and includes claims of every kind and nature,*
18 *including but not limited to, initial claims, counterclaims, cross-claims and*
19 *third-party claims, and claims based on constitution, statute, regulation,*
20 *ordinance, common law rule (including rules relating to contracts, torts,*
21 *negligence, fraud or other intentional wrongs) and equity. It includes*
22 *disputes that seek relief of any type, including damages and/or injunctive,*
23 *declaratory or other equitable relief.*

24 (*Id.*, Ex. A, § 13(a)(ii)) (emphasis added).

25 The August Lease also provides that Utah law shall govern the enforceability of
26 the arbitration provision. (*Id.*, Ex. A, § 13(i)).

27 In his Opposition, Tate attaches correspondence between his counsel and
28 Progressive’s counsel wherein Tate’s counsel asked for details regarding the purpose

1 of Progressive’s telephone calls, which are the subject of Tate’s Complaint.² (Decl. of
 2 Trinette G. Kent (“Kent Decl.”) ¶¶ 3–4, Ex. A, ECF No. 18-1, 18-2.) As part of this
 3 exchange, Progressive’s counsel indicated that Tate may have also applied for another
 4 lease at a later date. (*Id.*) In its Reply, Progressive submitted a supplemental
 5 declaration from Trevor Thatcher, Vice-President of Operations of Prog Leasing LLC,
 6 who declared that Tate has not entered into any other leases with Progressive. (Suppl.
 7 Thatcher Decl. ¶ 4, ECF No. 20-1.) And, to the extent that Tate had, it would have
 8 contained the same arbitration clause found in the August Lease. (*Id.* ¶ 5.)

9 The Court provided Tate the opportunity to respond to these allegations when it
 10 granted Tate’s Motion for Leave to File Sur-Reply. (ECF No. 24.) Tate did not
 11 provide any evidence, or otherwise rebut Thatcher’s Supplemental Declaration. He
 12 did not provide his own declaration indicating that he actually did enter into a second
 13 lease, which might be the subject of Progressive’s debt collection activities, or submit
 14 any evidence that the calls he allegedly received relate to anything other than the
 15 laptop, which was the subject of the August Lease. (*See* Sur-Reply, ECF No. 25.)
 16 Instead, Tate regurgitated the arguments from his Opposition, and contended that
 17 because we do not know the subject of the calls, we cannot determine whether Tate’s
 18 claims are included in the broad arbitration provision of the August Lease. (*Id.*)

19 III. LEGAL STANDARD

20 The Federal Arbitration Act is meant “to ensur[e] that private arbitration
 21 agreements are enforced according to their terms.” *AT&T Mobility LLC v.*
 22 *Concepcion*, 563 U.S. 333, 344 (2011) (internal citations and quotations omitted).
 23 Section 2 of the FAA “reflect[s] both a liberal federal policy favoring arbitration and
 24 the fundamental principle that arbitration is a matter of contract.” *Id.* at 339
 25 (quotations omitted).

26 _____
 27 ² As Progressive notes in its Reply, the contents of these emails are hearsay, and do not fall within
 28 any exception, as presented by Tate. The Court cites these emails to explain the parties’ arguments,
 and, as detailed below, does not find them determinative of the issue here—whether to arbitrate
 Tate’s claim.

1 The Court may not review the merits of this dispute. *Cox v. Ocean View Hotel*
2 *Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008). When determining whether to compel
3 arbitration, district courts are limited “to determining (1) whether a valid agreement to
4 arbitrate exists and, if it does (2) whether the agreement encompasses the dispute at
5 issue.” *Id.* (internal citations and quotations omitted). “When deciding whether the
6 parties agreed to arbitrate a certain matter..., courts generally...should apply ordinary
7 state-law principles that govern the formation of contracts.” *First Options of Chicago,*
8 *Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (citations omitted). Any ambiguities
9 regarding the scope of arbitration provisions are interpreted in favor of arbitration.
10 *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995). The party
11 opposing arbitration bears the burden of establishing that the arbitration provision is
12 invalid or does not encompass the claims at issue. *See Green Tree Fin. Corp. Ala. v.*
13 *McMahon*, 531 U.S. 79, 92 (2000); *Hendricks v. AT&T Mobility, LLC*, 823 F. Supp.
14 2d 1015, 1019 (N.D. Cal. 2011). Where a valid arbitration agreement exists, the Court
15 must enforce it. *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012
16 (9th Cir. 2004).

17 IV. DISCUSSION

18 Tate does not dispute that he signed the August Lease, which contains an
19 arbitration provision, or claim that the provision is unconscionable. He opposes
20 Progressive’s Motion to Compel Arbitration on the grounds that the issues in this case
21 are not within the scope of the arbitration clause in the August Lease. (Opp’n 6.)
22 Accordingly, the Court addresses the second prong of the Ninth Circuit’s required
23 analysis—whether the claims are encompassed within the arbitration agreement.³ *See*
24 *Cox*, 533 F.3d at 1119. The Court also addresses Progressive’s request to dismiss, or
25 stay, this action.

26 _____
27 ³ Since Tate did not dispute the enforceability of the August Lease, he did not address the clause in
28 the August Lease requiring the application of Utah law regarding enforceability. Because the
choice-of-law clause is not at issue, as framed by the parties’ briefing, the Court declines to address
it.

1 **A. Tate’s Claim Is Encompassed by the Broad Arbitration Clause**

2 In opposing Progressive’s Motion, Tate relies on *Salsbery v. Verizon Wireless*
3 (*VAW*), *LLC*, where the court denied the defendant’s motion to compel arbitration in a
4 case involving similar claims under the Telephone Consumer Protection Act
5 (“TCPA”) and Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”). No.
6 2:13-cv-26419, 2014 WL 3876635, at *6 (S.D. W. Va. Aug. 7, 2014). The similarities
7 stop there. In *Salsbery*, the court specifically held the arbitration clause was narrow,
8 and thus enjoyed “more latitude to determine whether the dispute ‘[fell] within the
9 purview of the clause’ or involve[d] an issue that [wa]s collateral to the main
10 agreement.” *Id.* at *5 (citing and quoting *Peerless Importers, Inc. v. Wine, Liquor &*
11 *Distillery Workers Union Local One*, 903 F.2d 924, 927 (2d Cir. 1990)). Here, the
12 arbitration clause in the August Lease is broad, and encompasses “any claim, dispute
13 or controversy between you and us (including any Related Party) that arises from or
14 relates in any way to this Lease or the Property (including any amendment,
15 modification or extension of this Lease)....” (Thatcher Decl. ¶ 3, Ex. A, § 13(a)(ii));
16 *see also Koyoc v. Progress Fin. Co.*, No. CV 13–09165–RSWL (AGR_x), 2014 WL
17 1878903, at *5 (C.D. Cal. May 9, 2014) (citing *Cayanan v. Citi Holdings, Inc.*, 928 F.
18 Supp. 2d 1182, 1208 (S.D. Cal. 2013) (interpreting similar language in Progressive
19 arbitration clause broadly)). “Where the arbitration provision is broad, there is a
20 heightened presumption in favor of arbitration such that the party resisting arbitration
21 must show ‘forceful evidence of a purpose to exclude the claim from arbitration....’”
22 *Koyoc*, 2014 WL 1878903, at *2 (quoting *AT&T Techs, Inc. v. Commc’ns Workers of*
23 *Am.*, 475 U.S. 643, 650 (1986)). Tate provides no such “forceful evidence,” and only
24 speculates as to why the arbitration clause does not encompass his claims.

25 Also distinguishable from *Salsbery* is Tate’s failure to identify with any sort of
26 specificity the subject of the calls that form the basis of his Complaint. In *Salsbery*,
27 the “dispute arose after the plaintiff refused to pay for services he claim[ed] were not
28 included in the original contract” that contained the arbitration clause. *Salsbery*, 2014

1 WL 3876635, at *4. Here, Tate alleges, without any evidence other than an email
2 from defense counsel, that the calls may have related to a second lease, which
3 Thatcher explains does not exist in Progressive's business records. (Suppl. Thatcher
4 Decl. ¶¶ 4–5.) Thatcher also explains that, to the extent Tate did enter into a second
5 lease, it would have contained the same arbitration clause. (*Id.*) Tate does not provide
6 any evidence that he entered into a second lease, or otherwise counter Progressive's
7 arguments, and fails to meet his burden to avoid arbitration. *Hendricks*, 823 F. Supp.
8 2d at 1019. Tate's argument that his claims are not encompassed within the
9 arbitration agreement are based on speculation as to why Progressive was calling Tate;
10 whereas Progressive provides the August Lease, which contains a broad arbitration
11 clause, and testimony from its Vice President that Tate did not enter into any other
12 leases, which Tate advances as the only other potential basis for the telephone calls
13 that underpin his Complaint.

14 Tate also cites a series of cases for the proposition that he should be entitled to
15 conduct discovery to determine whether the arbitration clause in the August Lease
16 encompasses his claims. (Opp'n 5.) The FAA permits limited pre-arbitration
17 discovery in circumstances where the opposing party claims the agreement to arbitrate
18 is unconscionable. *See Loewen v. Lyft, Inc.*, No. 15-cv-01159-EDL, 2015 WL
19 12780465, at *3 (N.D. Cal. June 12, 2015) (emphasis in original) (quoting *Simula,*
20 *Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999)); *see also Hodson v. DirecTV,*
21 *LLC*, No. C 12–02827 JSW, 2012 WL 5464615, at *8 (N.D. Cal. Nov. 8, 2012)
22 (denying request for pre-arbitration discovery, and addressing California statute
23 providing for pre-arbitration discovery not raised by plaintiff here); *McArdle v. AT&T*
24 *Mobility LLC*, No. C 09–1117 CW (MEJ), 2013 WL 1190277, at *2 (N.D. Cal. Mar.
25 21, 2013). Here, Tate does not claim the arbitration provision is unconscionable, and
26 does not provide any evidence that his claims relate to anything other than the laptop
27 he leased pursuant to the August Lease, which includes a broad arbitration clause.
28 Taking into account the FAA's presumption of arbitration in cases including a broad

1 arbitration clause, the Court finds that Tate has not met his burden in opposing
2 Progressive’s Motion to Compel Arbitration. *Hendricks*, 823 F. Supp. 2d at 1019.
3 Accordingly, the Court **GRANTS** Progressive’s Motion to Compel Arbitration.

4 **B. Should Tate Stay, or Should He Go?**

5 “Under the Federal Arbitration Act (FAA), if a federal district court determines
6 that a suit is subject to an arbitration agreement, it shall, on application of a party, stay
7 the litigation pending arbitration.” *Walker v. BuildDirect.com Tech., Inc.*, 733 F.3d
8 1001, 1004 (10th Cir. 2013); 9 U.S.C. § 3. In the Ninth Circuit, the district court has
9 discretion to dismiss a party’s complaint where the court finds that the arbitration
10 clause ensnares all of the party’s claims. *See Sparling v. Hoffman Const. Co., Inc.*,
11 864 F.2d 635, 638 (9th Cir. 1988) (“9 U.S.C. section 3 gives a court authority, upon
12 application by one of the parties, to grant a stay pending compliance with the
13 contractual arbitration clause.... [T]he provision [does not, however,] limit the court’s
14 authority to grant a dismissal”); *see also Azoulai v. La Porta*, No. CV 15–06083–
15 MWF–PLA, 2016 WL 9045852, at *5 (C.D. Cal. Jan. 25, 2016) (dismissing action
16 after compelling arbitration).

17 Here, the Court finds that Tate’s claims, as plead and represented in his
18 Opposition, fall within the arbitration clause of the August Lease. “To require
19 arbitration, [Tate’s] factual allegations need only ‘touch matters’ covered by the
20 contract containing the arbitration clause and all doubts are to be resolved in favor of
21 arbitrability.” *Simula, Inc.*, 175 F.3d at 721. Tate alleges claims under the TCPA and
22 Rosenthal Act, and alleges that he “is a natural person allegedly obligated to pay a
23 debt asserted to be owed to Defendant.” (Compl. ¶ 8.) He also alleges that
24 Progressive “placed calls to Plaintiff’s Number in an attempt to collect a debt.” (*Id.*
25 ¶ 9.) Tate provides no explanation as to what debt Progressive was attempting to
26 collect, aside from the debt incurred when he leased a laptop pursuant to the August
27 Lease. His only theory—that there was a second “attempted lease”—does not explain
28 how he would be obliged to pay a debt to Progressive aside from the one he incurred

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from the August Lease. Progressive submits evidence that Tate never entered into a second lease, and Tate fails to provide any argument or evidence to the contrary. The arguments and facts presented to the Court all indicate that Tate’s claims fall directly within the August Lease’s arbitration clause, which encompasses:

any claim, dispute or controversy between [him] and [Progressive]...that arises from or relates in any way to [the August Lease] (including any amendment, modification or extension of this Lease); any prior lease between you and us and/or the property subject to such prior lease; any of our marketing, advertising, solicitations and conduct relating to this Lease, the Property and/or a prior lease and related property; our collection of any amounts you owe....

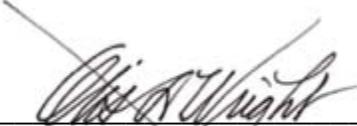
(Thatcher Decl. ¶ 3, Ex. A, § 13(a)(ii).) Accordingly, the Court exercises its discretion, and **DISMISSES** this action, so that the parties may arbitrate. *See Sparling*, 864 F.2d at 638.

V. CONCLUSION

For the reasons stated above, the Court **GRANTS** Progressive’s Motion to Compel Arbitration (ECF No. 15), and **DISMISSES** this action.

IT IS SO ORDERED.

October 24, 2017



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE