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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAURICE GRAYTON,

Plaintiff,

v.

SAN DIEGO COUNTY CREDIT
UNION, DOES 1 through 5,

Defendants.

Case No.: 18-cv-2254-WQH-WVG

ORDER

HAYES, Judge:

The matter before the Court is the Motion to Compel Arbitration (ECF No. 5) filed by Defendant San Diego County Credit Union (SDCCU).

I. BACKGROUND

On July 5, 2018, Plaintiff Maurice Grayton (Plaintiff) filed a Complaint in the Superior Court of California for the County of San Diego, case number 37-02018-00033141-CL-PO-CTL, against SDCCU. Plaintiff brings claims for breach of contract, unjust enrichment, fraud, “interference of prospective business relationship,” intentional infliction of emotional distress, and negligence. (ECF No. 1-2 at 3). Plaintiff alleges he “entered into a[n] unsecured credit transaction” with SDCCU, and that SDCCU “relied on evidence unsupported by material facts to set a rate higher than Plaintiff[’s] secure card.” *Id.* Plaintiff alleges that SDCCU “refuse[d] to reset term[s]/cond[i]t[io]ns” and “violated Title 15 USC § 1681, Fair Accurate Credit Transaction Act of 2003.” *Id.* Plaintiff seeks

1 \$10,000 in damages. *Id.* In an amended complaint dated September 11, 2018, Plaintiff
2 seeks \$7,500 in damages and alleges that he “tender[ed] a security of \$1200.00 on a secured
3 account on the amount of \$3,500.00,” “depleted \$3,200.00 of the \$3,500.00, and demanded
4 to close the account.” *Id.* at 23. Plaintiff alleges that SDCCU “refused the request for
5 months, however, upon another branch[’s] action the account was closed, but the tender
6 was less than the [Plaintiff’s] security (\$928.00).” *Id.*

7 On September 27, 2018, SDCCU removed Plaintiff’s claims to this Court based on
8 federal question jurisdiction. (ECF No. 1).

9 On October 4, 2018, SDCCU filed the Motion to Compel Arbitration supported by
10 a declaration and related exhibits. (ECF No. 5).

11 On November 14, 2018, Plaintiff filed a Response in Opposition to the Motion to
12 Compel Arbitration, asserting that SDCCU has failed to satisfy requirements to move to
13 compel arbitration and that the issues in this case are not within the scope of the agreement.
14 (ECF No. 7 at 1).

15 On October 15, 2018, SDCCU filed a Reply in support of the Motion, asserting it
16 has met all applicable requirements to move to compel arbitration and that the issues in this
17 case are within the scope of the agreement. (ECF No. 10).

18 **II. FACTUAL BACKGROUND**

19 Defendants provide the declaration of Patrick Cosgrove, Executive Vice President,
20 Chief Lending Officer, of SDCCU. (Cosgrove Decl. ¶ 1, ECF No. 5-2). Cosgrove’s
21 declaration states,

22 4. On February 8, 2017, Plaintiff signed a Credit Card Pledge of
23 Shares/Deposits relating to an application for a Secured Visa Classic credit
card (the “Credit Application”)

24 5. It is SDCCU’s custom and practice to provide members with a copy of the
25 Share Secured Visa Classic Consumer Credit Card Agreement whenever they
26 apply for such a card. Plaintiff chose to apply for a credit card with SDCCU,
and he would have had as much time as he wanted to review the Credit
27 Agreement before applying for the credit card.

28 6. When Plaintiff applied for the credit card, SDCCU did not promise him a
specific interest rate, nor could it, as SDCCU had to review his application

1 and pull his credit history. Plaintiff was approved for the credit card, which
2 he was authorized to use outside the state and the country.

3 7. On or about December 16, 2016, Plaintiff signed a “Membership
4 Application and Account Agreement” (the “Membership Application”), in
5 which he acknowledged that he had “received a copy and agree[d] to be bound
6 by” SDCCU’s current Terms and Conditions. . . .

7 8. SDCCU’s Terms and Conditions include an agreement to Arbitrate

8 *Id.* ¶¶ 4–8. The Credit Application signed by Plaintiff, a “copy of the Share Secured Visa
9 Classic Consumer Credit Card Agreement that Plaintiff would have received when he
10 applied for his credit card with SDCCU” (the Credit Card Agreement), the Membership
11 Application signed by Plaintiff, and a copy of SDCCU’s Terms and Conditions are attached
12 to the Cosgrove declaration. (Exhs. A–D to Cosgrove Decl., ECF No. 5-2).

13 The Credit Application states, “You understand that this document is governed by
14 the terms of the Consumer Credit Card Agreement and Disclosure, and is herein
15 incorporated by reference,” and shows Plaintiff’s signature, dated February 5, 2018. (Ex.
16 A to Cosgrove Decl., ECF No. 5-2 at 6). The fifth page of the Credit Card Agreement
17 states,

18 30. ARBITRATION - You and we agree that any and all claims arising from
19 or relating to this Agreement and/or any loan or service provided by us shall
20 be subject to binding arbitration under the Federal Arbitration Act (“FAA”).
21 Subject to the exclusions specifically identified below, this includes all
22 claims, including those based on contract, tort, equity, statute, or otherwise,
23 as well as claims regarding the scope and enforceability of this provision. It
24 includes all claims by or against you, us, and/or any others providing or
25 receiving any loan or service related to this Agreement. . . .

26 A single Arbitrator shall decide all claims subject to this provision and shall
27 render a final, written decision. You may choose the American Arbitration
28 Association (“AAA”), Judicial Arbitration and Mediation Service (“JAMS”),
or other similar arbitration service provider acceptable to us to administer the
arbitration. Consistent with the FAA, the appropriate AAA rules, JAMS rules,
or other service provider rules shall apply, as determined by the Arbitrator.
For AAA and JAMS, these rules are found at www.adr.org and
www.jamsadr.com. Unless otherwise agreed by the parties, the arbitration
shall take place within San Diego County.

1 Each party to the arbitration shall pay his, her, or its own costs of arbitration.
2 If you cannot afford the arbitration costs, you may apply for a waiver under
3 the relevant arbitration rules. If the arbitration service provider does not waive
4 your costs of arbitration, we will consider paying all or a portion of your costs
of arbitration if you can establish that You cannot afford them. . . .

5 (Ex. B to Cosgrove Decl., ECF No. 5-2 at 11). The Membership Application states, “I/We
6 acknowledge that I/we have received a copy and agree to be bound by the “Account
7 Disclosures and Agreement” booklet (which includes current Terms and Conditions,
8 notices and disclosures).” (Ex. C to Cosgrove Decl., ECF No. 5-2 at 13). The Membership
9 Application shows Plaintiff’s occupation as a Marine for the U.S. Military, and shows
10 Plaintiff’s signature, dated December 16, 2016. *Id.* The twenty-seventh page of the Terms
11 and Conditions states,

12 Unless you are an active duty member of the armed forces or are on active
13 Guard or Reserve duty, or your account otherwise falls under the protections
14 of the [Military Lending Act] or is otherwise exempt from arbitration under
15 federal law, you agree that any and all claims arising from or relating to this
16 Agreement or any service provided by SDCCU to you shall be subject to
17 binding arbitration under the Federal Arbitration Act (“FAA”). This includes
18 claims based on contract, tort, equity, statute, or otherwise, as well as claims
19 regarding the scope and enforceability of this provision. It includes all claims
by or against you, co-members, co-borrowers, SDCCU, and others providing
or receiving any product or service related to this Agreement or your account
with SDCCU.

20 A single Arbitrator shall decide all claims and shall render a final, written
21 decision. You may choose the American Arbitration Association (“AAA”),
22 Judicial Arbitration and Mediation Service (“JAMS”), or other similar
23 arbitration service provider acceptable to SDCCU to administer the
24 arbitration. Consistent with the FAA, the appropriate AAA rules, JAMS rules,
or other service provider rules shall apply, as determined by the Arbitrator.
For AAA and JAMS, these rules are found at www.adr.org and
www.jamsadr.com.

25 Unless otherwise agreed by the parties, the arbitration shall take place in San
26 Diego, California.

27 Each party to the arbitration shall pay his, her, or its own costs of arbitration.
28 If you cannot afford your arbitration costs, you may apply for a waiver under
the relevant rules. . . .

1 (Ex. D to Cosgrove Decl., ECF No. 5-2 at 20).

2 **III. DISCUSSION**

3 The Federal Arbitration Act (FAA) provides at § 2:

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

8 The FAA provides at § 4:

9 A party aggrieved by the alleged failure . . . to arbitrate under a written
10 agreement . . . may petition any United States district court which, save for
11 such agreement, would have jurisdiction . . . for an order directing that such
12 arbitration proceed

12 The FAA provides at § 3:

13 If any suit or proceeding be brought in any of the courts of the United States
14 upon any issue referable to arbitration under an agreement in writing for such
15 arbitration, the court . . . upon being satisfied that the issue . . . is referable to
16 arbitration . . . shall on application of one of the parties stay the trial of the
17 action until such arbitration has been had

18 The FAA “reflect[s] both a liberal federal policy favoring arbitration and the fundamental
19 principle that arbitration is a matter of contract.” *AT&T Mobility LLC v. Concepcion*, 563
20 U.S. 333, 339 (2011) (internal citations and quotation marks omitted). “The basic role for
21 courts under the FAA is to determine (1) whether a valid agreement to arbitrate exists and,
22 if it does, (2) whether the agreement encompasses the dispute at issue.” *Kilgore v.*
23 *KeyBank, Nat’l Ass’n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (en banc) (internal quotation
24 marks omitted). “If the response is affirmative on both counts, then the [FAA] requires the
25 court to enforce the arbitration agreement in accordance with its terms.” *Chiron Corp. v.*
26 *Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). “[T]he party seeking to
27 compel arbitration . . . bears the burden of proving the existence of an agreement to arbitrate
28 by a preponderance of the evidence.” *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d

1 1279, 1283 (9th Cir.), cert. denied, 138 S. Ct. 203 (2017) (quotation omitted). If the
2 moving party satisfies its burden, “the burden shifts to the party opposing the motion to
3 compel, who may present any challenges to the enforcement of the agreement and evidence
4 in support of those challenges.” *Baker v. Italian Maple Holdings, LLC*, 220 Cal. Rptr. 3d
5 887, 894 (Ct. App. 2017).

6 **A. Validity**

7 “[A]rbitration is a matter of contract and a party cannot be required to submit to
8 arbitration any dispute which he has not agreed so to submit.” *Norcia*, 845 F.3d at 1283
9 (quoting *AT&T Techs., Inc. v. Commc’n Workers*, 475 U.S. 643, 648 (1986)). A court
10 “‘appl[ies] ordinary state-law principles that govern the formation of contracts’ to decide
11 whether an agreement to arbitrate exists.” *Id.* (quoting *First Options of Chi., Inc. v. Kaplan*,
12 514 U.S. 938, 944 (1995)). “[T]he moving party” has the “burden to provide evidence of
13 the existence of an agreement to arbitrate,” and “it is generally sufficient for the party to
14 present a copy of the contract to the court.” *Baker*, 220 Cal. Rptr. 3d at 894. “In keeping
15 with California’s strong public policy in favor of arbitration, any doubts regarding the
16 validity of an arbitration agreement are resolved in favor of arbitration.” *Samaniego v.*
17 *Empire Today LLC*, 140 Cal. Rptr. 3d 492, 497 (Ct. App. 2012).

18 Plaintiff asserts that SDCCU has not “allege[d the] existence of [an] agreement to
19 arbitrate.” (ECF No. 7 at 3). SDCCU asserts that it proved an arbitration agreement exists.
20 (ECF No. 10 at 5). SDCCU has provided copies of the arbitration agreements. *See* ECF
21 No. 5-2 at 6, 11, 13, 20. The Court finds that SDCCU has carried the burden to show that
22 a valid arbitration agreement exists.

23 Plaintiff asserts that “the case is about Plaintiff’s deposit of money, the closing of
24 the account and the unlawful taking of funds.” (ECF No. 7 at 1). Plaintiff asserts that
25 “[t]he dispute between the parties is not within the scope of the arbitration provision.” *Id.*
26 SDCCU asserts that Plaintiff’s claims are within the scope of the arbitration agreement.
27 (ECF No. 10 at 6). The Court finds that Plaintiff’s claims relate to arrangements for a
28 credit card and an account with SDCCU. The Court concludes that Plaintiff’s claims

1 “aris[e] from or relat[e] to this Agreement and/or any loan or service provided by
2 [SDCCU],” *see* Ex. B to Cosgrove Decl., ECF No. 5-2 at 11, and “arising from or relating
3 to this Agreement or any service provided by SDCCU,” *see* Ex. D to Cosgrove Decl., ECF
4 No. 5-2 at 20. There is no evidence in the record to show that Plaintiff is “an *active duty*
5 member of the armed forces or . . . active Guard or Reserve duty, or . . . otherwise falls
6 under the protections of the [Military Lending Act].” *See* Ex. D to Cosgrove Decl., ECF
7 No. 5-2 at 20) (emphasis added); *see also Samaniego*, 140 Cal. Rptr. 3d 492, 497 (“[A]ny
8 doubts regarding the validity of an arbitration agreement are resolved in favor of
9 arbitration.”). The Court concludes that Plaintiff’s claims are within the scope of the Credit
10 Application, the Credit Card Agreement, the Membership Application, and the Terms and
11 Conditions.

12 **B. Enforceability**

13 If the movant carries its burden, “the burden shifts to the party opposing the motion
14 to compel, who may present any challenges to the enforcement of the agreement and
15 evidence in support of those challenges.” *Baker*, 220 Cal. Rptr. 3d at 894. Plaintiff asserts
16 that “the parties have not mediated as [the] contract requires before arbitration.” (ECF No.
17 7 at 3). The record contains no evidence that the agreements required the parties to mediate
18 as a prerequisite to arbitration. The Court concludes that Plaintiff has not carried the burden
19 to show that mediation provides grounds to deny the motion to compel arbitration in this
20 case. *Cf. Templeton Dev. Corp. v. Superior Court*, 51 Cal. Rptr. 3d 19, 27 (2006)
21 (concluding parties could not require arbitration when the agreement stated “that any
22 dispute . . . ‘shall be submitted to mediation . . . before resorting to Arbitration or litigation
23 [M]ediation is an express condition precedent to the hearing of any arbitration. . . .”
24 and the “record support[ed] the trial court’s finding, not disputed by the parties, that
25 petitioners failed to respond to [a] request for mediation when given the opportunity.”);
26 *Unite Here Local 30 v. Volume Servs., Inc.*, 723 F. App’x 403 (9th Cir. 2018) (affirming
27 district court’s determination that the parties’ mediation of union member’s termination
28 precluded arbitration).

1 Plaintiff asserts that SDCCU has not “ple[]d and prove[d] [a] request or demand for
2 arbitration,” and that Cal. Code Civ. P. § 1281.2 “requires a party filing a petition to compel
3 arbitration to plead and prove that it made a request or demand to the other party or parties
4 for arbitration of the controversy pursuant to and under the terms of their written arbitration
5 agreement.” (ECF No. 7 at 3) (citing *Mansouri v. Superior Court*, 104 Cal. Rptr. 3d 824,
6 830 (Ct. App. 2010) (citing Cal. Code Civ. P. § 1281.2)). SDCCU asserts that it was not
7 required to comply with § 1281.2 or otherwise to make a written demand for arbitration
8 prior to filing the motion to compel. (ECF No. 10 at 7). The FAA provides that “[a]ny
9 application to the court hereunder shall be made and heard in the manner provided by law
10 for the making and hearing of motions.” 9 U.S.C. § 6. Where applicable, California law
11 “requires a petition to compel arbitration to . . . plead[] and pro[ve] . . . a request or demand
12 by one party to the other party or parties for arbitration of such controversy.” *Mansouri*,
13 104 Cal. Rptr. 3d at 830 (citing Cal. Code Civ. P. § 1281.2). The Court concludes that
14 SDCCU was not required to make any additional requests for arbitration prior to filing the
15 Motion. The Court concludes that Plaintiff has not carried the burden to show that
16 California law provides grounds to deny the motion to compel arbitration in this case.

17 Plaintiff asserts that arbitration cannot be compelled if “the right to compel
18 arbitration . . . has been waived.” (ECF No. 7 at 1). SDCCU asserts that it knew of the
19 right to compel arbitration and did not act inconsistently with that right or cause prejudice
20 to Plaintiff. (ECF No. 10 at 7). “The right to arbitration, like other contractual rights, can
21 be waived”; however, “waiver of the right to arbitration is disfavored.” *Martin v. Yasuda*,
22 829 F.3d 1118, 1124 (9th Cir. 2016) (citations omitted). “[A]ny party arguing waiver of
23 arbitration bears a heavy burden of proof. . . . [to] demonstrate: (1) knowledge of an existing
24 right to compel arbitration; (2) acts inconsistent with that existing right; and (3) prejudice
25 to the party opposing arbitration resulting from such inconsistent acts.” *Id.* (quotations
26 omitted). The record contains no evidence showing that SDCCU acted inconsistently with
27 the right to compel arbitration. The record contains no evidence showing prejudice to
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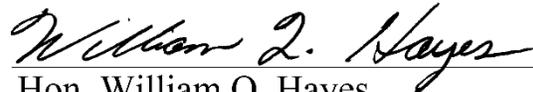
1 Plaintiff. The Court concludes that Plaintiff has not carried the “heavy burden” to show
2 that waiver provides grounds to deny the motion to compel arbitration in this case. *See id.*

3 The Court concludes that Plaintiff has not carried his burden to “present any
4 challenges to the enforcement of the agreement and evidence in support of those
5 challenges.” *See Baker*, 220 Cal. Rptr. 3d at 894. The Court concludes that a valid
6 arbitration agreement exists and that Plaintiff’s claims are within the scope of the
7 agreement.

8 **IV. CONCLUSION**

9 IT IS HEREBY ORDERED that the Motion to Compel Arbitration (ECF No. 5)
10 filed by Defendant San Diego County Credit Union is GRANTED. Pursuant to 9 U.S.C.
11 § 4, the parties are directed to proceed to arbitration in accordance with the terms of the
12 arbitration agreement. Pursuant to 9 U.S.C. § 3, Plaintiff’s claims are STAYED in favor
13 of arbitration.

14 Dated: March 14, 2019


15 Hon. William Q. Hayes
16 United States District Court