UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 24-745-KK-SHKx**	Date:	September 12, 2024
Title:	*Anton Saadeh v. Solibus Payments, Inc., et al.*		

Present: The Honorable	KENLY KIYA KATO, UNITED STATES DISTRICT JUDGE

Noe Ponce	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: (In Chambers) Order DENYING Defendants' Motion to Quash Service and Compel Arbitration [Dkt. 23]

I. BACKGROUND

On April 10, 2024, plaintiff Anton Saadeh ("Plaintiff") filed the operative Complaint against defendants Solibus Payments, Inc. ("Solibus"), Erek Newton, and Jennifer Newton. ECF Docket No. ("Dkt.") 1. Plaintiff asserts breach of contract and related state claims arising from an alleged agreement between Plaintiff and defendant Solibus, pursuant to which Plaintiff would "work as an independent contractor and [] simultaneously be a shareholder in the company." Id. ¶ 11. Plaintiff alleges defendant Erek Newton, the majority owner and chief executive officer of defendant Solibus, and his wife, Jennifer Newton, failed to compensate Plaintiff as promised and embezzled corporate funds. Id. ¶¶ 3, 11-28.

On June 26, 2024, Plaintiff served the summons and Complaint on defendants Erek Newton and Jennifer Newton. Dkts. 21, 22.

On July 24, 2024, defendants Erek Newton and Jennifer Newton ("Moving Defendants") filed the instant Motion to Quash Service and Compel Arbitration ("Motion"), asserting service of process was improper and should be quashed because Plaintiff and defendant Erek Newton agreed to arbitrate any dispute regarding the management or operation of defendant Solibus. Dkt. 23. Moving Defendants, therefore, argue this action should be compelled to arbitration. Id. In support of the Motion, Moving Defendants present the declaration of defendant Erek Newton, stating he met with Plaintiff on September 10, 2019, at which time they "ratified the incorporation of"

defendant Solibus and agreed any disputes between them "would be covered by arbitration[.]" Dkt. 23 at 13-15, Declaration of Erek Newton ("Newton Decl."), ¶¶ 3, 5. The declaration further states "[a] true and correct copy of that document is attached hereto" as Exhibit A. Id. ¶ 5. Exhibit A is a document entitled "Action by Unanimous Written Consent in Lieu of Organizational Meeting by the Board of Directors of [defendant Solibus][,]" dated September 10, 2019 and signed by defendant Erek Newton. Id., ¶ 5, Ex. A. The "Action by Unanimous Written Consent" contains an arbitration clause providing "[a]ny dispute, controversy, or claim arising out of or relating to any corporate action . . . shall be settled by arbitration." Id. According to defendant Erek Newton, this document "was saved in the corporate book/file," which Plaintiff "had free access to review." Id., ¶¶ 6-7.

On August 29, 2024, Plaintiff filed an Opposition to the Motion. Dkt. 34. Plaintiff argues (1) the request for an order quashing service is untimely, and (2) no valid arbitration agreement exists. Id. In support of the Opposition, Plaintiff presents a declaration stating he never agreed to arbitration and he "was never made aware of" the arbitration clause contained in the September 10, 2019 "Action by Unanimous Written Consent." Dkt. 34 at 9-10, Declaration of Anton Saadeh ("Saadeh Decl."), ¶ 7. Moreover, Plaintiff states the September 10, 2019 "Action by Unanimous Written Consent" was "fabricated" after the initiation of the instant action. Id.

Moving Defendants have not filed a Reply.

This matter, thus, stands submitted. The Court finds this matter appropriate for resolution without oral argument. See Fed. R. Civ. P. 78(b); L.R. 7-15. For the reasons set forth below, the Motion is **DENIED**.

II. DISCUSSION

A. MOVING DEFENDANTS' REQUEST FOR AN ORDER QUASHING SERVICE OF THE SUMMONS AND COMPLAINT IS DENIED

1. Applicable Law

"A federal court does not have jurisdiction over a defendant unless the defendant has been served properly[.]" Direct Mail Specialists v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988). A defendant challenging the sufficiency of service of process may move for dismissal under Federal Rule of Civil Procedure 12(b)(5), which concerns defects in the method of service attempted. See U.S.A. Nutrasource, Inc. v. CNA Ins. Co., 140 F. Supp. 2d 1049, 1052 (N.D. Cal. 2001).

2. Analysis

Here, to the extent Moving Defendants seek to challenge the sufficiency of service of process, Moving Defendants fail to identify any defects in the method of service attempted by Plaintiff. See U.S.A. Nutrasource, 140 F. Supp. 2d at 1052. Rather, Moving Defendants contend "service of process is improper" where "a valid arbitration clause exists[.]" See dkt. 23 at 8.

However, Moving Defendants cite no authority in support of this proposition.[1] Accordingly, Moving Defendants' request for an order quashing service of the summons and Complaint is **DENIED**.

B. MOVING DEFENDANTS' REQUEST FOR AN ORDER COMPELLING ARBITRATION IS DENIED

1. Applicable Law

Under the Federal Arbitration Act ("FAA"), a written arbitration agreement is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract[.]" 9 U.S.C. § 2. "The FAA limits federal court review of arbitration agreements to two gateway arbitrability issues: (1) whether a valid agreement to arbitrate exists, and if it does, (2) whether the agreement encompasses the dispute at issue." Bielski v. Coinbase, Inc., 87 F.4th 1003, 1009 (9th Cir. 2023) (internal quotation marks omitted). "If the response is affirmative on both counts, then the [FAA] requires the court to enforce the arbitration agreement in accordance with its terms." Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000).

In ruling upon a motion to compel arbitration, "district courts rely on the summary judgment standard of Rule 56 of the Federal Rules of Civil Procedure." Hansen v. LMB Mortg. Servs., Inc., 1 F.4th 667, 670 (9th Cir. 2021). The party seeking to compel arbitration "bears the burden of proving the existence of an agreement to arbitrate by a preponderance of the evidence." Norcia v. Samsung Telecomms. Am., LLC, 845 F.3d 1279, 1283 (9th Cir. 2017) (internal quotation marks omitted). "The party opposing arbitration bears the burden of proving any defense, such as unconscionability." Lim v. TForce Logistics, LLC, 8 F.4th 992, 999 (9th Cir. 2021) (internal brackets omitted).

Courts generally apply "ordinary state-law principles that govern the formation of contracts" in deciding whether a valid arbitration agreement exists. First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944 (1995). Under California law, "mutual assent is a required element of contract formation." Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014). "Only when there is no genuine issue of fact concerning the formation of the agreement should the court decide as a matter of law that the parties did or did not enter into such an agreement." Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1141 (9th Cir. 1991).

2. Analysis

Here, Moving Defendants have not met their burden of establishing the existence of a written agreement to arbitrate by a preponderance of the evidence. See Norcia, 845 F.3d at 1283. Specifically, Moving Defendants present no evidence of Plaintiff's assent to the arbitration clause

[1] Notably, if a court finds an action involves an arbitrable dispute, a party may request a stay of the action pending arbitration. Smith v. Spizzirri, 601 U.S. 472, 478 (2024). Under such circumstances, the court lacks discretion to dismiss the proceeding. Id. Furthermore, "staying rather than dismissing a suit comports with the supervisory role that the [Federal Arbitration Act] envisions for the courts." Id.

contained in the September 10, 2019 "Action by Unanimous Written Consent."[2] The document is not signed by Plaintiff, see Newton Decl., ¶ 5, Ex. A, and Moving Defendants present no evidence controverting Plaintiff's assertion he "was never made aware of" the arbitration clause, see Saadeh Decl., ¶ 7. Additionally, defendant Erek Newton's representation that Plaintiff "had free access to" the document after its execution, see Newton Decl., ¶¶ 6-7, is insufficient to demonstrate Plaintiff ever manifested his assent to its terms.[3] Moving Defendants, therefore, fail to demonstrate by a preponderance of the evidence that Plaintiff consented to the arbitration clause in the September 10, 2019 "Action by Unanimous Written Consent." Accordingly, Moving Defendants' request for an order compelling arbitration is **DENIED**.

III.
CONCLUSION

For the reasons set forth above, Defendants' Motion to Quash Service and Compel Arbitration is **DENIED**.

IT IS SO ORDERED.

[2] While Plaintiff contends the "Action by Unanimous Written Consent" was fabricated, Saadeh Decl., ¶ 7, even assuming its authenticity, the Court finds this document insufficient to establish Plaintiff's consent to arbitration.

[3] Moving Defendants appear to argue Plaintiff "adopted and accepted the arbitration clause" through his conduct. Dkt. 23 at 7. However, Moving Defendants fail to identify – let alone present evidence of – specific conduct by Plaintiff amounting to a manifestation of assent to the arbitration clause. See id.