

DEPARTMENT 48 LAW AND MOTION RULINGS

Case Number: 20STCP00708 Hearing Date: July 29, 2020 Dept: 48

[TENTATIVE] ORDER RE: MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

On February 18, 2020, Plaintiff Nancy Aceituno (“Plaintiff”) filed a complaint against 24 Hour Fitness USA, Inc. (“24 Hour Fitness”) and Morteza Tahmasebi aka Ramin Tahmasebi (“Tahmasebi”) (collectively, “Defendants”) arising from Plaintiff’s employment with 24 Hour Fitness, where Tahmasebi was her supervisor. Plaintiff alleges eleven causes of action: (1) sexual harassment (hostile work environment) under the Fair Employment and Housing Act (“FEHA”); (2) sexual harassment (quid pro quo) under FEHA; (3) sexual harassment (directed at others) under FEHA; (4) gender-based discrimination (disparate treatment); (5) assault; (6) battery; (7) retaliation under FEHA; (8) failure to prevent harassment, discrimination, and retaliation under FEHA; (9) intentional infliction of emotional distress; (10) violation of article 1, section 8 of the California constitution; and (11) negligent hiring, training, supervision, and retention of employees.

On June 3, 2020, Defendants moved to compel arbitration and stay this action pending the completion of arbitration. On June 25, 2020, 24 Hour Fitness filed a notice of bankruptcy filing and imposition of automatic stay pursuant to section 362(a) of the Bankruptcy Code. Accordingly, this action is stayed as to 24 Hour Fitness.

REQUEST FOR JUDICIAL NOTICE

24 Hour Fitness requested the Court take judicial notice of seven orders in other cases compelling arbitration of its similar arbitration agreements. The Court denies the request as the orders are not material to this decision.

LEGAL STANDARD

When seeking to compel arbitration of a plaintiff's claims, the defendant must allege the existence of an agreement to arbitrate. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219 (*Condee*)). The burden then shifts to the plaintiff to prove the falsity of the agreement. (*Ibid.*) After the Court determines that an agreement to arbitrate exists, it then considers objections to its enforceability. (*Ibid.*)

The Court must grant a motion to compel arbitration unless the defendant has waived the right to compel arbitration or if there are grounds to revoke the arbitration agreement. (*Ibid.*; Code Civ. Proc., § 1281.2.) Under California law and the Federal Arbitration Act, an arbitration agreement may be invalid based upon grounds applicable to any contract, including unconscionability, fraud, duress, and public policy. (*Sanchez v. Western Pizza Enterprises, Inc.* (2009) 172 Cal. App. 4th 154, 165-166.)

DISCUSSION

Existence of Arbitration Agreement

Tahmasebi contends that Plaintiff signed an arbitration agreement in which she agreed to arbitrate all employment-related disputes. (Motion at p. 2.) Tahmasebi submits a copy of the agreement. (Wiley Decl. ¶ 4, Ex. A ["Dispute Resolution Agreement"].) The agreement covers Plaintiff's causes of action against Tahmasebi because generally employees of the organization that is a party to an arbitration agreement are also bound by and entitled to enforce the arbitration agreement. (*RN Solutions, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1520.) Tahmasebi therefore satisfied his initial burden. (See *Condee, supra*, 88 Cal.App.4th at p. 219.)

Plaintiff argues that she was never presented with or signed an agreement. (Opposition at pp. 1, 6.)

Plaintiff declares that she does not recall seeing, signing, or acknowledging an arbitration or dispute resolution

agreement. (Aceituno Decl. ¶¶ 3-5.)

When a plaintiff does not recall signing an agreement, the defendant has the burden of proving by a preponderance of the evidence that an electronic signature is authentic, i.e., that it was the act of the plaintiff. (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 846.) Tahmasebi submits the declaration of James Wiley, 24 Hour Fitness's Senior Director of Human Resource Information System. (Wiley Decl. ¶ 1.) He is personally familiar with the process and practices in place for newly hired employees to review and complete employment documentation, known as onboarding. (*Id.* at ¶ 3.) He is also familiar with the technical aspects of the onboarding system and the system's security features. (*Ibid.*) Plaintiff used Okta, a human resources identity management system that manages user accounts for 24 Hour Fitness systems, to set a password after validating personal information including the last four digits of her Social Security number and full birth date. (*Id.* at ¶ 4.) Because of Okta's security features, only Plaintiff knew her password. (*Ibid.*) New hires used Okta to log into ADP Advantage to access new hire documents. (*Ibid.*) Plaintiff was required to view the Dispute Resolution Agreement and click on it to electronically sign it. (*Ibid.*) The ADP Vantage system stores the electronically signed documents and the Policy Acknowledgement Status Reports indicating when each document was electronically signed, and they are unchangeable. (*Ibid.*) Wiley has access to these documents as a result of his position. (*Ibid.*) He attaches a copy of the Dispute Resolution Agreement that Plaintiff electronically signed on November 30, 2017 and a copy of Plaintiff's policy acknowledgement. (*Ibid.* & Exs. A-B.)

Plaintiff acknowledges in her declaration that she completed an "on-screen session" including reading and signing documents and watching videos. The focus of her declaration is that she was under time pressure to complete the session, was not told that the documents she signed had anything to do with arbitration, and was not permitted to print the documents.

Wiley's declaration is sufficient to establish by a preponderance of the evidence that Plaintiff electronically signed the arbitration agreement as part of the onboarding process. He has personal knowledge of the onboarding process for new hires in California in November 2017, including the requirement that all new hires electronically sign documents including an arbitration agreement. There is no evidence that Wiley or someone else falsified Plaintiff's electronic signature, as suggested by Plaintiff's counsel.

Tahmasebi adequately shown the existence of an arbitration agreement that covers Plaintiff's claims, and the burden shifts to Plaintiff to dispute its enforceability.

Armendariz Factors

Arbitration agreements for FEHA claims must (1) provide for neutral arbitrators, (2) provide for more than minimal discovery, (3) require a written award, (4) provide for all of the types of relief that would otherwise be available in court, and (5) not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 102 (*Armendariz*).

The arbitration agreement here provides that the parties will select a neutral arbitrator, or if they cannot agree, they may apply to a court for appointment of a neutral arbitrator. (Dispute Resolution Agreement at p. 2.) The parties have "the right, in accordance with the Federal Rules of Civil Procedure (except as otherwise provided in this Agreement), to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses." (*Ibid.*) The arbitrator may award any remedy that would be available in a court of law, and the arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. (*Id.* at p. 4.)

Finally, the agreement states each party will pay their own attorney fees, but 24 Hour Fitness will pay the arbitrator's and arbitration fees where required by law. (*Ibid.*) 24 Hour Fitness states that it stipulated that

it would pay all administrative costs and the arbitrator fees. However, that was before 24 Hour Fitness filed for bankruptcy. Now that the case against 24 Hour Fitness is stayed, the Court cannot enforce a stipulation by 24 Hour Fitness. Without 24 Hour Fitness to pay the arbitration fees and costs, the arbitration agreement does not satisfy *Armendariz*. Because Tahmasebi did not file a reply brief, he did not provide any information on this point and did not state that he would pay the administrative costs and arbitrator fees. Therefore, the motion to compel arbitration is DENIED.

CONCLUSION

The case against 24 Hour Fitness is STAYED. Tahmasebi's motion to compel arbitration is DENIED. The Court sets a status conference re bankruptcy for January 28, 2021 at 8:30 a.m.

Moving party to give notice.

Parties who intend to submit on this tentative must send an email to the Court at SMCDEPT48@lacourt.org indicating intention to submit. Parties intending to appear are STRONGLY encouraged to appear remotely.
