

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

AIDS HEALTHCARE
FOUNDATION,
Plaintiff,

v.

PRIME THERAPEUTICS LLC,
Defendant.

CV 21-4979 DSF (AGRx)

Order GRANTING Motion to
Compel Arbitration (Dkt. 35)

Defendant Prime Therapeutics LLC has moved to compel arbitration based on the contract between the parties. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15.

Plaintiff AIDS Healthcare Foundation does not contest that there is a written agreement between the parties, that the agreement contains an arbitration clause, and, under controlling precedent, the choice of American Arbitration Association rules indicates that the arbitrator should decide the question of arbitrability of the dispute. However, Plaintiff argues that the arbitration provision should not be enforced because it is procedurally and substantively unconscionable.

To establish unconscionability, a party must demonstrate both procedural and substantive unconscionability, although both are not required to be equally present. Lim v. TForce Logistics, LLC, 8 F.4th 992, 1000 (9th Cir. 2021). Plaintiff concedes that the inquiry here is whether the agreement to arbitrate arbitrability is unconscionable. See Opp'n at 6:4-6.

Plaintiff has not demonstrated procedural unconscionability. Even if the delegation of authority to decide arbitrability could be classified as “adhesive,” “[t]o describe a contract as adhesive in character is not to indicate its legal effect. It is, rather, the beginning and not the end of the analysis insofar as enforceability of its terms is concerned.” Graham v. Scissor-Tail, Inc., 28 Cal. 3d 807, 819 (1981). An adhesive provision will not be enforced only if it “does not fall within the reasonable expectations of the weaker or ‘adhering’ party” or is substantively unconscionable. Id. at 820.

Plaintiff provides no indication that an agreement to delegate arbitrability to an arbitrator would fall outside of the reasonable expectations of the parties in a contract between sophisticated business entities as those present here. Nor is the agreement to delegate arbitrability substantively unconscionable.

Plaintiff offers three arguments for substantive unconscionability. First, it claims that it would be unable to vindicate its full statutory rights in arbitration. This argument is flawed for at least two reasons: (1) the argument does not pertain to the agreement to delegate the question of arbitrability itself and (2) the potential barrier to complete statutory monetary relief stems from the contract between the parties, not from the choice of arbitration. In its second and third arguments, Plaintiff argues that it would be unconscionable to require arbitration because Plaintiff would “face[] financial risks” due to the cost of arbitration and because the arbitration clause requires arbitration in Defendant’s home state of Minnesota. But these are arguments that could be raised against any arbitration or choice of venue clause and, without more, do not override the presumptive enforceability of such clauses.

The motion to compel arbitration is GRANTED. Defendant argues that the case should be dismissed rather than stayed. However, there is a “preference” for staying actions pending arbitration rather than dismissing them. MediVas, LLC v. Marubeni Corp., 741 F.3d 4, 9 (9th Cir. 2014), and Defendant has not provided any particular reason why that preference should not be followed here. Therefore, the action is

STAYED pending arbitration. The parties are to file a joint report on the status of arbitration every 180 days. The first report must be filed by May 31, 2022. The caption page of each report must state the date on which the next report is due.

IT IS SO ORDERED.

Date: November 30, 2021



Dale S. Fischer
Dale S. Fischer
United States District Judge