



**ORDER REGARDING CLAIMANT'S MOTION FOR ORDER FOR ALL CLAIMS TO PROCEED IN A COURT OF LAW; SCHEDULING ORDER FOR EVIDENTIARY HEARING**

Case Number: 01-17-0001-7722

Sean Gilbert DeVries

-vs-

Experian Information Solutions, Inc.

Pursuant to Rule 33 of the Consumer Arbitration Rules (Rules) of the American Arbitration Association (AAA) a Hearing was held before Arbitrator Carolyn Samiere on December 5, 2017, at the AAA offices in San Francisco California on Claimant's Motion for an order for all claims to proceed in a court of law.

Michael R. Reese, Esq. appeared for Claimant Sean Gilbert DeVries and Kerry C. Fowler, Esq. appeared for Respondent Experian Information Solutions, Inc.

Based upon on the papers filed in this matter, argument of counsel, and good cause appearing, by Order of the Arbitrator, the following is now in effect:

**Background:**

Claimant Sean De Vries brings this motion pursuant to Rule 33 to determine the arbitrability of his claims for (1) violation of the Fair Credit Reporting Act (FCRA); (2) injunctive relief claims for violation of California's Business and Professions Code §17200 (UCL); (3) injunctive relief claims for violation of California Consumer Legal Remedies Act, California Civil Code §1750 (CLRA); and (4) injunctive relief claims for violation of California Consumer Reporting Agencies Act, California Civil Code §§1785.1 – 1785.36 (CCCRAA). Claimant also seeks an order that all claims proceed in a court of law. Claimant initially filed a class action complaint against Respondent Experian Information Solutions, Inc. in the Federal District Court for the Northern District of California (District Court), alleging the very same claims filed in this arbitration action.

- 1) This Order affirms the referring District Court's determination that the 2016 version of the subject agreement in this action, the Terms of Use (Terms) govern this dispute. Neither party has presented sufficient evidence supporting a contrary position. Evidence presented by the parties shows that Claimant's continued use of Respondent's services constituted Claimant's consent to updated versions of the Terms, with the April 5, 2016 version being the last relevant version.
- 2) The arbitration provision in the Terms (Arbitration Provision) is valid and enforceable. While the intent to mandate arbitration for all claims relating to the contractual relationship between Claimant and Respondent is evident from the plain meaning of the Arbitration Provision, the Arbitration excepts from its ambit matters deemed not arbitrable pursuant to governing law. There is nothing in the Arbitration Provision prohibiting severance of claims, particularly for joined damages and injunctive relief claims. While the Arbitration Provision states that public injunctive actions cannot be arbitrated, it does not prohibit statutory actions arising from the contractual relationship from being brought in the appropriate forum when authorized and specified by "governing law". Therefore, the Arbitration Provision is not null and void -- it is fully enforceable in this action.
- 3) Claimant's claims for public injunctive relief are not arbitrable. Pursuant to the holding in *McGill v. Citibank*, N.A., 393 P.3d 85 (Cal. 2017), Claimant's claims for public injunctive relief under the UCL, CLRA, and CCCRAA should not be arbitrated. The Arbitration Provision is in accord: where the forum, venue or

arbitrability of claims is determined by governing law, the mandatory terms of the Arbitration Provision does not apply. Based on the holding of the *McGill* court, Claimant's public injunctive relief claims under the UCL, CLRA and CCCRAA cannot be arbitrated. These claims must proceed in a court of law. Claimant's claims for disgorgement and restitution benefit the public, and they likewise must be determined in a court of law (Restitution and Disgorgement pursuant to California Business and Professions Code §§17203 and 17535).

- 4) Claimant's claims under the FCRA, including the damages claims, are arbitrable and within the jurisdiction of this arbitration. According to the plain meaning of the Arbitration Provision, Claimant's claims for failure to receive a free credit report, as currently described, do not involve any claim "relating to the information contained in your [Claimant's] consumer disclosure or report, including but not limited to claims for alleged inaccuracies . . ." (Bracketed text added.) While Claimant argues that its claims under the FCRA regarding Respondents' purported failure to provide a credit disclosure to Claimant are exempted from arbitration based on the Arbitration Provision, this Arbitrator is not convinced that Claimant's FCRA claims qualify for exemption. According to the Arbitration Provision, only those claims involving the content or substance of a credit disclosure are exempted, while claims involving website experience, access and delivery of the report – the elements of Claimant's FCRA claims – fall squarely within the Arbitration Provision's mandatory arbitration requirement.
- 5) The Arbitrator retains jurisdiction over all other damages claims under the UCL, CLRA and CCCRAA based on the mandatory arbitration requirement in the Arbitration Provision.

**EXCHANGE OF INFORMATION BETWEEN THE PARTIES (Evidentiary Hearing: March 8, 2018):**

Not later than **March 3, 2018** the parties shall exchange all briefs (optional statement of the case), copies of all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the hearing and itemized claims and counterclaims. Each proposed exhibit shall be pre-marked for identification using the following designations:

PARTY	EXHIBIT #	TO	EXHIBIT #
Claimant	C-1		C-100
Respondent	R-1		R-100

The parties shall attempt to agree upon and submit a jointly prepared consolidated and comprehensive set of joint exhibits.

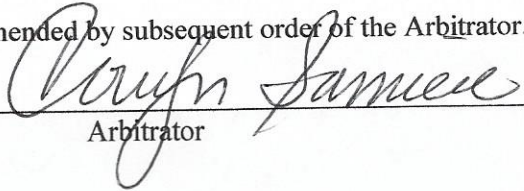
**Copies of the exhibits shall be provided to the Arbitrator at the hearing. The AAA does not require a set of exhibits for its files.**

Not later than **March 3, 2018** the parties shall serve and file a disclosure of all witnesses reasonably expected to be called at the hearing. The disclosure of witnesses shall include the full name of each witness and a short summary of anticipated testimony. Witness testimony may be presented telephonically, by web conferencing, video or other audio transmission, or in person at the Evidentiary Hearing. If certain required information is not available, the disclosure shall so state. Parties presenting witness testimony shall make all arrangements for the presentation, including media setup.

All deadlines stated herein shall be strictly enforced. After such deadline, the parties may not file except with the permission of the Arbitrator, good cause having been shown.

This Order shall continue in effect unless and until amended by subsequent order of the Arbitrator.

Date: December 12, 2017

  
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Arbitrator