

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

VERONICA MCCLUSKEY VS. AIRBNB, INC. ET AL

001C06354598

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FILED
San Francisco County Superior Court

MAY 30 2018

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION
12

13 VERONICA MCCLUSKEY

14 Plaintiff,

15 vs.

16 AIRBNB, Inc., a Corporation, and AIRBNB
17 PAYMENTS, INC., and DOES 1-20,

18 Defendants.
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20
21
22
23

Case No.: CGC-18-563528

^{MM}
[PROPOSED] ORDER GRANTING
DEFENDANT AIRBNB, INC.'S MOTION
TO COMPEL ARBITRATION

Date: May 30, 2018

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Harold E. Kahn


Complaint Filed: January 5, 2018

RES. ID: 03010417-03

24 DEFENDANT AIRBNB, INC.'S motion to compel arbitration is granted and this case is
25 stayed pending the conclusion of arbitration proceedings regarding the claims alleged in the
26 complaint filed by plaintiff Veronica McCluskey. After review of the parties' supplemental
27 briefs, the court re-affirms the tentative ruling issued prior to the April 17, 2018 hearing with the
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1 modification that the delegation clause in both versions 6 and 7 require that an arbitrator, not this
2 court, decide whether the parties' arbitration agreement is enforceable. Airbnb has shown that
3 Ms. McCluskey assented to the Terms of Service, including the arbitration language therein,
4 because the sign up screen adequately informed Ms. McCluskey that, by clicking to sign up, she
5 was agreeing to the Terms of Service. Under both the Federal Arbitration Act and the California
6 Arbitration Act, parties may delegate issues of arbitrability to the arbitrator, including disputes
7 regarding the scope and the enforceability of the arbitration agreement and whether the
8 arbitration agreement is unconscionable. (*Aanderdud v. Superior Court* (2017) 13 Cal. App.
9 5th 880, 892; *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 240). The arbitration
10 language of both versions 6 and 7 of the Terms and Services is clear and unmistakable evidence
11 of the parties' intent to delegate the issue of enforceability of the arbitration agreement to the
12 arbitrator. Unlike *Baker v. Osborne Development Corp.* (2008) 159 Cal.App.4th 884, 891, there
13 is no provision in the Terms of Service that refers to both the court and the arbitrator as having
14 jurisdiction to rule on the enforceability of clauses of the agreement. The reference to state and
15 federal courts in California in the section entitled "Controlling Law and Jurisdiction" pertains to
16 the carve-out for injunctive and equitable relief and, per *Aanderud*, 13 Cal.App.5th at 893-894,
17 this does create any ambiguity as to whether arbitrability has been delegated to the arbitrator.
18 Ms. McCluskey does not appear to contend that the delegation clause is unconscionable separate
19 and apart from the remainder of the arbitration agreement, which would be an issue to be decided
20 by the court rather than the arbitrator. But even if she did, she does not identify anything
21 substantively unconscionable about the delegation clause, so that clause is valid and enforceable
22 per the unconscionability doctrine. IT IS SO ORDERED.

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24 Dated 5/30, 2018.


25 Hon. Harold E. Kahn
26 Judge, Superior Court, County of San Francisco
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