AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of Arbitration Between:

Re: 01-18-0004-3400
Melody Yiru aka Shi Yiru
VS.
WorldVentures Holdings, LLC

- Dallas, Texas

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated by and in accordance with the arbitration agreement entered into by the above-named parties and having been duly sworn, and having reviewed the evidence and arguments presented in Claimant Melody Yiru's ("Claimant") June 12, 2019 Motion for Partial Summary Adjudication, Respondent WorldVentures Holdings, LLC's ("WorldVenture") June 28, 2019 Memorandum in Opposition to Claimant's Motion for Partial Summary Adjudication, Respondent's July 11, 2019 Reply to same, as well as Respondent's July 17, 2019 Sur-Reply Memorandum Regarding Claimant's Motion for Partial Summary Adjudication, as well as oral argument from the parties, do hereby FIND and AWARD, as follows:

1. This dispute between the parties is governed by an arbitration agreement that has led to the instant arbitration, administered under the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures.

2. The parties agreed that this arbitration matter would proceed with Claimant's potentially dispositive threshold issue being addressed and determined prior to remaining issues in the case. Additionally, Rule 32(b) of the AAA's Commercial Arbitration Rules governing this

matter, allow for the arbitrator to bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

3. The threshold issue raised by Claimant's June 12, 2019 Motion for Partial Summary Adjudication and argued by both parties in the submissions referenced above, is not a novel issue and has been addressed numerous times under Texas law by numerous courts. After detailed review of the parties' submissions and argument, the undersigned agrees with Claimant that the arbitration provision at issue between the parties is illusory because the agreement between the parties, including the arbitration provisions referenced in Section 12 of the Terms and Conditions, allows for the agreement to be amended at the sole discretion of WorldVentures.

4. Additionally, it is clear that the agreement between the parties does not contain either of the limits, required by the Texas Supreme Court in *In re Halliburton Co* and its progeny, in order to save the agreement from being considered illusory under Texas law. Specifically, the language at issue in the instant matter does not restrain Respondent from applying any unilateral modifications immediately upon notice. The agreement does not provide for any minimum notice period which would guarantee Claimant at least some window within which to file an arbitration that could not subsequently be amended away.

5. The agreement as worded, does not guard against Respondent's right to unilaterally modify the terms, to do away with the obligation to arbitrate, and to do so without any minimum notice period. In this regard, Respondent's actual intent is irrelevant to the "illusoriness" inquiry. The fact that Respondent could, if it so chose, amend away the arbitration requirement, renders the agreement illusory under Texas law. Stated more succinctly, Respondent is only bound to arbitrate for as long as Respondent unilaterally decides it is bound, because the agreement gives Respondent

this option. Whether or not Respondent actually chooses to exercise the option does not matter. The option was present at the time the agreement was formed. Consequently, the agreement is treated as illusory from inception and therefore unenforceable according to the Texas Supreme Court. Additionally, because the agreement is considered illusory from inception, severability cannot salvage its enforceability. Although not all cases reach the same conclusion, the undersigned arbitrator agrees with the line of cases that concludes that the issue of "illusoriness" is one of contract formation and validity from inception.

6. Finally, Respondent's argument regarding the arbitration agreement "surviving" termination is unavailing. Respondent is correct that a "survival" clause may help prevent a finding of illusoriness in certain situations. However, the final decision will be a result of the interplay between the relevant provisions. The case of *In re AdvancePCS Health L.P.* provides such an example. In that matter, a "survival" clause stating that ". . . any obligations that arise prior to the termination of the Agreement shall survive such termination" was coupled with a provision that any amendments became effective not less than thirty (30) days after the notice. Therefore, if Advance PCS amended away its obligation to arbitrate, the employee was given at least a thirty (30) day window in which to file an arbitration, before the amendment would take effect. Once the AdvancePCS employee filed the arbitration, the employer's obligation which arose prior to any termination, would survive. In the WorldVentures situation, the very same Policies and Procedures document that contains the arbitration agreement, mentions no less than seven times, that any of the policies may be amended at any time in the sole discretion of WorldVentures, and with no prior notice period or "window" within which the Representative could get an arbitration on file. Consequently, WorldVentures has the unilateral ability to decide whether or not there

would even still be any arbitration agreement, at any point in time prior to any subsequent termination.

7. In other words, although the arbitration provision states that the agreement to arbitration shall survive any termination or expiration of the Agreement, the "agreement to arbitration" that survives is still the same agreement that by its terms, can be modified unilaterally and immediately, in ways that render it illusory as previously described above.

8. Alternatively, Respondent argues that even if the agreement were found to be illusory, Claimant should not be allowed on the one hand, to use the contract provisions Claimant likes, to sue under or enforce the contract, while simultaneously objecting to the provisions of the contract that Claimant does not like. Respondent's "cherry-picking" argument is legally sound. However, the argument is factually misplaced. Claimant's first and primary underlying claim seeks rescission of the contract. On page six of her Sep. 11. 2018 Memorandum Opinion and Order (previously cited by both parties) Judge Scholer recognized that Claimant seeks rescission, albeit in the context of rejecting Claimant's argument that rescission is outside the purview of the arbitrator's authority.

9. Additionally, Claimant represented in their Motion that claimant is bringing claims that sound in tort, or statute, rather than for breach of contract. Claimant will be bound by those representations. Therefore, Respondent's argument is overruled.

10. For the reasons set forth above, Claimant's Motion for Partial Summary Adjudication should be, and is hereby, GRANTED.

Therefore, IT IS ORDERED that this arbitration is dismissed and the parties are directed to notify Judge Scholer and the clerk of the Court of this tribunal's ruling.

The administrative fees and expenses of the AAA totaling $2,950 and the compensation and expenses of Arbitrator totaling $6,795 are to be borne as incurred.

SIGNED this 10TH day of October, 2019.

Hon. Carlos G. Lopez, Arbitrator