

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

KYÄNI, INC., an Idaho Corporation;  
MICHAEL BRESHEARS, an individual;  
KIRK HANSEN, an individual;

Plaintiffs,

v.

YAN GUO, an individual; JU JIN, an  
individual; and those similarly situated,

Defendants.

Case No. CV-2018-4807

**MEMORANDUM DECISION AND  
ORDER**

This is a Memorandum Decision and Order on Defendant's Motion to Compel Arbitration;  
oral argument was heard this motion on November 8, 2018.

**I. FACTS AND PROCEEDINGS**

The Guos signed an agreement to become independent distributors with Kyäni late in 2015 and early 2016. The Guos appeared as class representatives in a California case in late 2017. They alleged that Kyäni's compensation model rewards recruitment of other distributors over selling products, therefore making it an illegal pyramid scheme. Kyäni suggests that the arbitration agreement covers these claims and that arbitration is the proper forum for this action.

Kyäni argues that in order to become a distributor, the person requesting to join must consent to three separate electronic agreements online. This agreement sets Idaho as the exclusive jurisdiction, Bonneville County as the exclusive venue, Idaho law as controlling, and names the Federal Arbitration Act as the controlling arbitration rules. Plaintiffs make allegations that the arbitration agreement is illusory, unconscionable, or, in the alternative, unenforceable as a matter of fact and law.

In the case in California, Kyäni filed several motions to dismiss and to enforce the arbitration agreement. The California Court decided to stay the case and send the case to this Court for a decision regarding the scope of arbitration for these claims.

## II. STANDARD

The Federal Arbitration Act (FAA) provides that an arbitration agreement “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. When examining a motion to compel arbitration, “the Court must limit its inquiry to whether there is an agreement to arbitrate.” *Mason v. State Farm Mut. Auto. Ins. Co.*, 145 Idaho 197, 201, 177 P.3d 944, 948 (2007). When the parties have an agreement to arbitrate as a means to settle a dispute, the court’s review is limited to finding whether the party seeking arbitration is making a claim which is facially governed by the contract. *Id.*

In order to find whether or not the parties agreed to arbitrate, this court must find the scope of the agreement. *Clearwater REI, LLC v. Boling*, 155 Idaho 954, 959, 318 P.3d 944, 949 (2014). The scope an arbitration clause refers to the issues or claims that are subject to arbitration under the clause. *Id.* The court should apply the principles of contract interpretation under state law to determine scope. *Id.* If this Court finds a valid arbitration agreement that covers the substantive claims, then the FAA “leaves no place for the exercise of discretion.” *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 218, 105 S.Ct. 1238, 1241 (1985); see also *AT&T LLC v. Concepcion*, 563 U.S. 333, 360, 131 S.Ct. 1740, 1758 (2011). And any “[d]oubts are to be resolved in favor of coverage.” *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 315, 246 P.3d 961, 968 (2010). Lastly, any agent may avail themselves of the arbitration agreement of the principle. *Clearwater REI, LLC*, 155 Idaho at 960, 318 P.3d at 950 (2014).

## III. ANALYSIS

The defendants make several arguments that rest on the idea that California law should be controlling. The California court made it very clear that “[t]he issues presented in the Motion as to the scope and enforceability of the arbitration provision, which is part of the Independent Distributor Agreement, raise questions of contract interpretation. Accordingly, the District Court of the Seventh Judicial District is the proper venue for the determination of such issues, which include the application and enforceability of the arbitration provision.” Therefore, Idaho law is controlling.

The defendants also make several arguments that Kyäni’s Policies and Procedures conflict with Kyäni’s Distributor Agreement. Through a plain reading of the contract, there is no conflict between the two documents. For example, the defendants specifically argue that the policies and procedures have a dispute resolution board while the distributor agreement has a dispute resolution clause as well. A plain reading of the documents would show no conflict arises, as the policies and procedures handle disputes that occur exclusively between distributors, while the distributor agreement handles disputes between a distributor and Kyäni. The defendants have not brought a single conflicting provision to this Court’s attention.

Further, defendants request that the contract be deemed unenforceable because the arbitration agreement limits injunctive relief. Idaho has never ruled on this issue; defendants cite only Federal Case Law on the matter. Idaho law very clearly favors the broad application of arbitration. If defendants wish to argue over the recovery and enforceability of this provision, they may do so in arbitration.

The defendants’ claims that the contract is illusory are not ripe. The ripeness test in Idaho requires that a party show (1) that the case presents definite and concrete issues; (2) a real and substantial controversy exists (as opposed to hypothetical facts); and (3) there is a present need for

adjudication. *State v. Manley*, 142 Idaho 338, 342, 127 P.3d 954, 958 (2005) (citing *Noh v. Cenarrusa*, 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002); *Miles v. Idaho Power Co.*, 116 Idaho 635, 642, 778 P.2d 757, 764 (1989)). Further, in every contract there is an implied covenant of good faith and fair dealing. *Federal Nat. Mortg. Ass'n v. Hafer*, 158 Idaho 694, 699, 351 P.3d 622, 627 (2015). The defendants claim that the contract is illusory because it gives Kyäni the ability to amend the contract unilaterally, after giving notice and the distributor accepting those changings by continuing to receive commissions. No facts have been brought forward that Kyäni has attempted to amend the contract unilaterally in any way or in violation of their duty to act in good faith. Therefore, there is no real controversy or need for adjudication by this Court in this matter.

The defendants also claim that the contract is unconscionable. For a contract to be unconscionable in Idaho, it must be both substantively and procedurally unconscionable. *Lovey v. Regence BlueShield of Idaho*, 139 Idaho 37, 42 27 P.3d 877, 882 (2003). Procedural unconscionability rests in lack of voluntariness and lack of knowledge. *Id.* Defendants had three separate agreements to read over, acknowledge, and consent to before becoming an independent distributor. They were not forced into signing and no evidence was presented that they were rushed into signing. Kyäni has also shown that the agreements were available in the defendants' native language, Chinese. The fact that there was no force or undue influence and also that the defendants could take their time to fully comprehend the document, shows that there is no evidence of procedural unconscionability in this case.

This Court not only finds no procedural unconscionability, meaning that the contract is not unconscionable, but also finds no substantive unconscionability. Substantive unconscionability is determined by a test that it is unconscionable "if it is a bargain that no person in his or her senses and

not under delusion would make on the one hand and that no honest and fair person would accept on the other.” *Allen v. Reynolds*, 145 Idaho 807, 811, 186 P.3d 663, 667 (2008). The defendant has made several arguments under California and Federal case law regarding factors of unconscionability. While appropriate in the examination of substantive unconscionability, they are in no way binding on this Court, and in aggregate do not show substantive unconscionability. The only claim that the defendants bring forward under Idaho law for substantive unconscionability is prohibitive cost. The Idaho Courts have refused to accept the proposition that a prohibitive cost to arbitrate could be a basis for invalidating an agreement to arbitrate. *Regence BlueShield of Idaho*, 139 Idaho at 45 27 P.3d 877, 882. Therefore, there is no room for this Court to find this substantively unconscionable for the costs to the defendant.

Instead, there is a test that is independent of unconscionability: an agreement to arbitrate may be declared unenforceable if the costs preclude a party from effectively vindicating their federal statutory rights in the arbitral forum. *Murphy v. Mid-W. Nat’l Life Ins. Co. of Tenn.*, 139 Idaho 330, 332, 78 P.3d 766, 768 (2003) (holding that an arbitration agreement was unenforceable when the claims were under \$10,000 but the minimum arbitration cost to the party was \$2,500). Defendants have shown evidence that each would separately owe \$1,275 to arbitrate under the American Arbitration Association. While it is not unconscionable it could possibly be unenforceable, but that was not pled by Defendants. Further, within ten (10) counts in the original complaint, the Defendants claim they only are asking for \$1,500. Not only is it difficult to determine the possible recovery in this case due to it being pled as a class action and no numbers being given to the court in the prayer for relief, but Defendants have grossly misrepresented to the Court the possible level of recovery in this case. Due to the lack of evidence of costs and recovery in this case and the fact that the defense

was not properly pled, the arbitration agreement will be held to be enforceable.

Lastly, adhesion contracts in Idaho are not procedurally unconscionable nor are they against public policy as long as the party could have found a separate contract to serve a similar purpose. *Id.* Unlike a contract for housing or utilities, a contract to become an independent distributor is neither necessary nor exclusive to one organization. Contracts for independent employment are readily utilized in circumstances such as this. This court is not persuaded to hold that all employment contracts of adhesion are unconscionable.

All the claims before the Court, having arisen from the agreement and being covered by the arbitration clause, are within the scope of the arbitration agreement. Therefore, all claims should proceed to arbitration.

#### **IV. CONCLUSION**

For the foregoing reasons, the Motion is GRANTED.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 2018.

Signed: 12/4/2018 01:22 PM



---

Jon J. Shindurling  
District Judge

**CERTIFICATE OF SERVICE**

Signed: 12/4/2018 01:39 PM

I hereby certify that on this \_\_\_\_\_ day of December, 2018, the foregoing MEMORANDUM DECISION AND ORDER was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

**Parties Served:**

Brent Manning  
bmanning@mc2b.com

Jess M Krannich  
jkrannich@mc2b.com

Dillon Scott Erickson  
dillonerickson@hopkinsroden.com

Blake J. Lindemann  
blake@lawbl.com

Clerk of the District Court  
Bonneville County, Idaho

by



Deputy Clerk