

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: February 29, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED.

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	22CV403929	Suemi Gonzales et al vs Santa Clara Valley Transportation Authority	This is continued by stipulation of the parties to March 28, 2024.
2	23CV418763	Isabel Ibarra vs Township Building Services, INC	Defendant Township Building Services, Inc.’s Motion to Strike Plaintiff’s demand for punitive damages is GRANTED WITHOUT LEAVE TO AMEND. An amended notice of motion with this hearing date and time was served by electronic mail on Plaintiff on January 22, 2024. No opposition was filed. “[T]he failure to file an opposition creates an inference that the motion [] is meritorious.” (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Plaintiff also fails to assert any cause of action or to otherwise allege facts to support a claim for punitive damages. Because Plaintiff failed to respond to the motion to strike, Plaintiff fails to meet her burden to show how the complaint could be amended to overcome the motion to strike. Accordingly, Defendant’s motion is granted without leave to amend. Court to prepare formal order.
3	18CV337836	Cryplex, Inc. vs Bitmain Technologies Holding Company	Defendant Bitmain Technologies Holding Company’s Motion to Compel Third Party Bitdeer, Inc. to appear for deposition and produce documents is GRANTED. Please scroll down to line 3 for full tentative ruling. Court to prepare formal order.
4	21CV381901	PHYSICIANS SURGERY SERVICES, LP et al vs Shultz & Associates et al	Plaintiff’s Motion to Compel Responses to Request for Production of Documents (Set One) and for Sanctions is GRANTED. An amended notice of motion with this hearing date and time was served on Defendants by electronic mail on February 1, 2024. No opposition was filed. “[T]he failure to file an opposition creates an inference that the motion [] is meritorious.” (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The parties appeared for a case management conference on February 20, 2024, and Defendant reported producing documents and trying to work through the remaining issues addressed in the motion to compel, so Defendant did not file an opposition. No further information was provided to the Court then or since. Defendant failed to provide any responses even after Plaintiff’s numerous attempts to obtain written responses and documents. Accordingly, Defendant is ordered to (1) serve verified written responses without objections, (2) produce all requested documents, and (3) pay \$1860 in sanctions within 20 days of service of this formal order. Court to prepare formal order.
5	22CV402927	JANE DOE vs DOE 1 et al	San Jose Unified School District’s Motion for Reconsideration of the Court’s order dismissing this action without prejudice is GRANTED. The Court’s January 19, 2024 order dismissing this entire action without prejudice is reversed, and a case management conference is set for July 2, 2024 at 10:00 a.m. in Department 6. Court to prepare formal order.
6	23CV418655	KELVIN GARCIA vs U GYM, LLC et al	Defendant U Gym, LLC’s Motion to Compel Arbitration and Stay is GRANTED. Please scroll down to line 6 for full tentative ruling. Court to prepare formal order.
7	18CV337836	Cryplex, Inc. vs Bitmain Technologies Holding Company	Bitmain’s unopposed motion to continue trial is GRANTED. All current trial dates are VACATED and RESET as follows: January 13, 2025 trial, January 8, 2025 mandatory settlement conference; January 9, 2025 at 1:30 in Department 6 for trial assignment. The parties shall meet and confer regarding a stipulation under Code of Civil Procedure section 583.330 and fact and expert discovery deadlines in light of this new trial date. This order to be reflected in the minutes.

8	19CV356936	CYTOBANK, INC. vs THE MCCLURE LAW FIRM, P.C. et al	Patricia Ward's Motions to Vacate the Dismissal and Request for Trial De Novo and to Confirm the MFAA Arbitration Award are GRANTED. The Court finds Judge Alloggiamento specifically reserved and directed the parties to bring these issues to the case management department, which Ward did by filing these motions. The Court further finds <i>Perez v. Grajales</i> (2008) 169 Cal. App. 4th 580 controls; CLF's attempts to distinguish <i>Perez</i> and the cases cited and analyzed therein are not persuasive. Court to prepare formal order. Moving party to prepare form of judgment.
9	19CV356936	CYTOBANK, INC. vs THE MCCLURE LAW FIRM, P.C. et al	Please see line 8, above.
10	19CV356936	CYTOBANK, INC. vs THE MCCLURE LAW FIRM, P.C. et al	Please see line 8, above.

Calendar Line 1

Case Name: *KELVIN GARCIA vs U GYM, LLC et al*

Case No.: 23CV418655

Before the Court is Defendant U Gym, LLC's Motion to Compel Arbitration and Stay or Dismiss. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

Plaintiff filed this action on June 30, 2023 asserting (1) retaliation in violation of Labor Code § 1102.5, (2) wrongful termination in violation of public policy, (3) failure to pay overtime compensation, (3) failure to pay minimum wage, (4) failure to provide meal periods, (6) failure to provide rest breaks, (5) failure to pay wages due upon termination; (8) failure to issue accurate and itemized wage statements, (9) failure to indemnify, and (10) unlawful business practices in violation of California Business and Professions code § 17200.

Defendant asserts this matter must be sent to arbitration and the litigation stayed because Plaintiff entered an arbitration agreement at the time he commenced his employment with UGym. (Declaration of Lacey Leon, Ex. A.) In support, Defendant submits a copy of an arbitration agreement with Plaintiff's name and signature dated April 9, 2022. Plaintiff claims in an unsigned declaration that he does not remember signing this agreement and there is insufficient evidence to support that he did so.

II. Legal Standard and Analysis

In a motion to compel arbitration, the Court must determine "(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement." (*Bruni v. Didion* (2008) 160 Cal. App. 4th 1272, 1283 (citations omitted).) "The petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. [Citation.] In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination. [Citation.]" (*Bruni*, 160 Cal. App. 4th at 1282 (citations omitted).)

Plaintiff primarily argues the arbitration is not enforceable because it is not properly authenticated, uGym is not a named party to the agreement, and he does not remember signing it. None of these arguments is persuasive.

Typically, “[a] document offered into evidence must be properly authenticated regardless of the fact it is not excludable on other grounds.” (*Condee v. Longwood Management Corp.* (2001) 88 Cal. App. 4th 215, 218 (internal citations omitted).) However, “[f]or purposes of a petition to compel arbitration, it is not necessary to follow the normal procedures of document authentication.” (*Id.* at 218-219.) The Court is required to determine whether an agreement to arbitrate exists, not the validity of any such agreement. (*Id.*) “This conclusion is bolstered by California Rules of Court, rule 371. A petitioner must attach a copy of the agreement to the petition, *or* its ‘provisions . . . shall be set forth’ in the petition. . . Rule 371 does not require the petitioner to introduce the agreement into evidence or provide the court with anything more than a copy or recitation of its terms. Petitioner need only allege the *existence* of an agreement and support the allegation as provided in rule 371.” (*Id.*; *see also Sprunk v. Prisma LLC* (2017) 14 Cal. App. 5th 785 (same); *Gamboa v. Northeast Community Clinic* (2021) 72 Cal. App. 5th 158, 165 (once moving party produces prima facie evidence of a written arbitration agreement by attaching the agreement or summarizing the terms in a motion to compel, the opposing party bears the burden of producing *evidence* to challenge the authenticity of the agreement).) Defendant has satisfied this requirement here by attaching the agreement to the Leon Declaration as Exhibit A.

Next, the Supplemental Leon declaration makes clear that UGym is a subsidiary of Ultimate NeV, LLC. As such, it is expressly included in the arbitration agreement.

Finally, even assuming the statements in Plaintiff’s unsigned declaration to be sworn statements, it does not matter whether Plaintiff remembers signing the agreement. As noted above, once Defendant comes forward with prima facie evidence of an agreement to arbitrate, the Court must generally send the matter to arbitration. Code of Civil Procedure section 1281.2 states: “the court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked.” (See also *Cinel v. Barna* (2012) 206 Cal.App.4th 1383, 1389.) “[A] party opposing the petition bears the burden of proving by a preponderance of the

evidence any fact necessary to its defense.” (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842.) There are some employment matters in which parties argue unconscionability, but that is not argued here, nor based on the Court’s reading of the parties’ submissions and the arbitration agreement would it be applicable. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83.)

Having found there to be an agreement to arbitrate, the motion to compel this matter to arbitration is GRANTED. This matter is stayed pending the outcome of the arbitration.

The May 5, 2024 OSC for failure to serve is VACATED, and a status review hearing regarding the arbitration is set for September 26, 2024 at 10:00 in Department 6.

Calendar Line 3**Case Name:** *Cryplex, Inc. vs Bitmain Technologies Holding Company***Case No.:** 18CV337836

Before the Court is Defendant Bitmain Technologies Holding Company's ("Bitmain") Motion to Compel Non-Party Bitdeer Inc.'s ("Bitdeer") Production of Documents and Testimony. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

This is a trade secret case. Plaintiff Cryplex, Inc. ("Cryplex") alleges Bitmain's former co-CEO, Jihan Wu, was involved in the acts leading to this lawsuit. While this case was pending, Mr. Wu left Bitmain and is now the Chief Executive Officer, Chief Financial Officer, and Secretary of Non-Party Bitdeer. Bitmain has evidence from its discovery of Cryplex that Cryplex contacted Mr. Wu at Bitmain to discuss this lawsuit, including "litigation funding", "acquisition of claims", or "business transactions." Bitmain seeks to obtain further discovery on these topics directly from Bitdeer. Bitdeer vehemently opposes these requests.

The Court previously ruled that the discovery Bitmain seeks is relevant to this case. In its January 9, 2024 order granting Bitmain's ex parte application for request for international judicial assistance pursuant to Hauge Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters from Jihan Wu, the Court wrote:

The Court has carefully reviewed Cryplex's opposition and does not require oral argument. The Court finds the topics are likely to lead to the discovery of admissible evidence (i.e., not irrelevant). And, while the Court declines to make a blanket ruling that all aspects of the topics listed in section 10 and 11 are subject to the common interest privilege, this ruling is without prejudice to Cryplex asserting appropriate objections to particular communications, if necessary. Potentially privileged documents shall be listed on a privilege log. If there is a common interest privilege, the producing party will be equally motivated to preserve such privilege.

Now Bitmain seeks the same information it sought from Mr. Wu from his company, Bitdeer. The Court fails to see how the analysis is different. The materials sought in these requests is likely to lead to the discovery of admissible evidence – the standard on a discovery motion. Discovery is

generally permitted “regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Cal. Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*)

If there really is a common interest privilege, such documents must be listed on a privilege log with “sufficient factual information for other parties to evaluate the merits of that claim”. (Code Civ. Pro. §2031.240.)

Accordingly, Bitmain’s motion to compel is GRANTED. Bitdeer is ordered to comply with the subpoena within 20 days of service of this formal order.