

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA

MINUTE ORDER

Date: 12/15/2008  
Judicial Officer Presiding: Judge Henry Walsh  
Clerk: Hellmi McIntyre

Time: 02:19:28 PM Dept: 42

Reporter:

Case Title: Dotson vs. Amgen, Inc.

**Case No: 56-2008-00325938-CU-WT-VTA**

Case Category: Civil - Unlimited Case Type: Wrongful Termination

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Event Type: Ruling on Submitted Matter

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**Appearances:**

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**RULING ON SUBMITTED MATTER**

The court has taken under submission the motion by defendant Amgen to compel arbitration of the issues raised by plaintiff Darrell Dotson in his complaint filed August 26, 2008.

Plaintiff is a licensed attorney who was hired by Amgen as a patent attorney in October of 2004. At the time of his hire, he was employed by a law firm. The negotiations leading to his hire by Amgen included Amgen furnishing him a copy of the arbitration agreement at issue in this motion, and the clear statement that his acceptance of this agreement was a necessary pre-requisite to him being hired. Dotson signed the agreement, and was hired. There is no contention that his signature on the arbitration agreement was coerced or rushed. It was, however, presented in a take-it-or-leave-it context, and he took it.

After being employed by Amgen for slightly less than 4 years, Dotson was terminated for certain claimed irregularities, including an alleged misuse of company e-mail. The specifics of his termination are not pertinent at this stage of the proceedings. Dotson has filed his complaint for wrongful termination seeking various forms of damages, and has demanded a jury trial. Amgen contends that the dispute is one which is within the scope of the arbitration agreement

Each side presents arguments which are not controlling. There have been rulings by other judges in both Ventura and Orange County. Each of these cases, however, involved different facts, and different arguments. There is an economic disparity between Dotson and Amgen, but that exists in

virtually all cases where one of the parties is a corporation, and one is not. Mr. Dotson is both a licensed attorney, and was highly compensated by Amgen. None of these factors, however, directly address the issue present here, which is the fairness of the arbitration agreement.

Some background regarding arbitration is necessary to set the stage. Arbitration as a forum for the resolution of disputes is highly favored. That judicial favor is, however, tempered by the need for the controlling arbitration agreement to be both procedurally and substantively fair to both sides. In employment cases, the agreement is typically prepared by the employer, and presented to the employee as a condition of employment without negotiation regarding its terms. As such, the judicial discussion focuses on whether the employee is getting a fair shake in being required to resolve a dispute in a forum which typically excludes a jury, and which may severely restrict other characteristics of a Superior Court case.

*Armendariz v. Foundation Health*, 24 Cal.4th 83, was one of the first cases to state the required minimums for an enforceable arbitration agreement. Successor cases have focused on various of the *Armendariz* elements. There are other applicable cases due to the variance among arbitration agreements, and the variance of the underlying facts forming the dispute between employer and employee.

In this case, the court finds that the arbitration agreement is a contract of adhesion. This, however, is not dispositive. A contract of adhesion is not per se unenforceable. Only when its provisions are unfair does it become unenforceable.

The court finds that the *Armendariz* factors requiring neutral arbitrators (and the manner of their selection), the requirement of a written award, the requirement for types of relief available in court, and an equitable provision for the payment of costs and fees are all present, and are supportive of enforcing the agreement. The difficulty is the provision of the agreement regarding discovery.

As it exists, the arbitration agreement allows each side the deposition of one natural person, and all expert witnesses. Beyond that, additional depositions are subject to a showing of "need" to the arbitrator. It is with this provision that the court finds a substantive flaw.

This limitation on discovery is the reverse of the usual presumption in Superior Court where depositions are not limited unless the Court issues a protective order. Within the context of an employment case, this is a critical distinction. The employee typically has a greater need to take depositions to get access to persons not otherwise available to him/her in the form of company officers, supervisors, and employees who participated in the decision to fire, or who may have knowledge regarding the facts on which that decision was based. Documents can provide some information, but cases frequently turn on testimony, including testimony of what a document means and the circumstances of its preparation. Secondly, employers frequently i.e. virtually always, make motions for summary judgment/summary adjudication (which are permitted by the arbitration agreement) and which are decided on declarations and deposition testimony. To leave the ability to

obtain this testimony to an arbitrators determination of "need" has the potential to work a fatal disadvantage to plaintiff. For this reason, the court finds that the agreement at issue is flawed. There is irony to this. The advantages of arbitration are frequently described as being a quick and streamlined remedy for the resolution of disputes. Both of those factors involve the potential sacrifice of substantive rights to achieve that result. As a consequence, to provide substantive fairness, it is necessary to preserve the elements which elongate the process.

The court does not find that its function is to re-write the arbitration agreement to make it substantively fair. The petition to compel arbitration is denied.

Clerk to give notice.