Exhibit 4

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-4012-GW(JEMx)	Date	September 28, 2017
Title	*Chuanjie Yang, et al. v. Market America, Inc., et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Katie Thibodeaux	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Daren M. Schlecter Blake J. Lindemann	Lawrence B. Steinberg Pressly M. Millen

PROCEEDINGS: **DEFENDANTS' MOTION TO TRANSFER ACTION TO MIDDLE DISTRICT OF NORTH CAROLINA, OR, IN THE ALTERNATIVE, TO STAY OR DISMISS ACTION PENDING ARBITRATION [39]**

The Court's Tentative Ruling is circulated and attached hereto. Court hears oral argument. For reasons stated on the record, Defendants' motion is TAKEN UNDER SUBMISSION. Court to issue ruling.

A Status Conference is set for November 6, 2017 at 8:30 a.m. Parties will file a report by October 26, 2017.

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Initials of Preparer JG

Yang, et al. v. Mkt. Am., Inc., et al., Case No. 2:17-cv-04012-GW-(JEMx)
Tentative Ruling on Defendants' Motion to Transfer Action to Middle District of North Carolina, or, in the Alternative, to Stay or Dismiss Action Pending Arbitration

Chuanjie Yang, Ollie Lan aka Ruoning Lan, and Liu Liu (collectively, "Plaintiffs") sue Market America, Inc. ("Market America"), Market America Worldwide, Inc., James Howard Ridinger, Loren Ridinger, and Marc Ashley (collectively, "Defendants"), asserting eight claims for relief in their First Amended Complaint – Class Action ("FAC") filed on July 20, 2017: 1) judgment declaring the arbitration provision unenforceable; 2) endless chain scheme; 3) unfair and deceptive practices claims under Cal. Bus. & Prof. Code § 17200, et seq.; 4) false advertising, pursuant to Cal. Bus. & Prof. Code § 17500, et seq.; 5) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(a); 6) RICO, 18 U.S.C. § 1962(c); 7) RICO, 18 U.S.C. § 1962(d); and 8) federal securities fraud. *See* Docket No. 33.

According to the FAC, the case generally involves allegations that Defendants operate an illegal pyramid/fraudulent endless-chain scheme targeting Chinese-American immigrants. *See* FAC ¶¶ 3, 6, 100-03. They take money by charging fees in return for the right to sell products that they do not manufacture, and reward for recruiting other participants into the pyramid. *See id.* ¶¶ 6, 29-30. Income is made only from the recruitment of additional sales representatives, and by way of wholesale commissions. *See id.* ¶¶ 43, 46. The individual defendants, all at the top of the pyramid, collude by making similar statements to promote the MarketAmerica scheme. *See id.* ¶¶ 55, 59-60. Plaintiffs were distributors of MarketAmerica. *See id.* ¶¶ 68-70.

Plaintiffs acknowledge that some class members have had to sign a one-page document labeled "Independent Distributor Application and Agreement," which requires a distributor to agree to the "terms" of the agreement. *See id.* ¶¶ 73-74. Below the signature box on the form, the agreement directs those viewing it to see the reverse side for "terms and conditions" of the agreement and, on the reverse side, there is an arbitration provision. *See id.* ¶¶ 75-76. There is also, according to Plaintiffs, an "internal reconciliation procedure" and a "two-tiered Kangaroo court administrative review proceeding" that are a "sham." *See id.* ¶ 84. Plaintiffs assert that the arbitration

provision is unenforceable. *See id.* ¶¶ 77-90, 108-10.

Defendants now move to transfer the action to the Middle District of North Carolina or, alternatively, to stay or dismiss the action. They do not move to compel arbitration, however, apparently because of a belief – shared by Plaintiffs[1] – that this Court cannot compel arbitration outside of this District.[2] This notion is the lynchpin of this particular motion.[3] *See, e.g.*, Docket No. 39, at 6:1-3 ("[T]he Court must honor the parties' agreement and transfer this case to the Middle District of North Carolina so that Defendants can compel arbitration in that district.").

The problem with this lynchpin is that – even assuming there are no questions whatsoever about enforceability of the arbitration agreement and its venue provision – it appears to the Court that it may be a faulty one. Although there are differing views on this question, one leading practice guide on the topic of arbitration suggests that, at least in the Ninth Circuit, a court *may* order arbitration to commence in a location outside the district court's boundaries: "According to the Ninth Circuit, a petition to compel need not be filed in the forum designated in the arbitration agreement as the place for the arbitration hearing: '(T)he venue provisions of the FAA do not supplant the general venue provisions of 28 USC §1391(a).'" Knight, Chernick, et al., California Practice Guide: Alternative Dispute Resolution (2016) ("Knight & Chernick") § 5:300.2, at 5-296 (quoting *Textile Unlimited, Inc. v. A.BMH & Co., Inc.*, 240 F.3d 781, 784 (9th Cir. 2001)).

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[1] Defendants appear to have been influenced, in their structuring of this motion, by the allegation in Plaintiffs' FAC that "[u]nder controlling precedent in the Ninth Circuit, Market America cannot seek to compel arbitration in another state, here the Middle District of North Carolina," and, consequently, "Market America's sole remedy is to seek to transfer the case should it seek to compel arbitration in another venue." FAC ¶ 72; *see also* Docket No. 39, at 20:7-10 ("In the FAC, Plaintiffs point out that this Court may not compel arbitration in North Carolina, as the parties agreed to do."). The only case citation Plaintiffs offer in support of their "controlling precedent in the Ninth Circuit" assertion is to a Northern District of California case, *Beauperthuy v. 24 Hour Fitness USA, Inc.*, No. 06-0715-SC, 2012 WL 3757486, *5 (N.D. Cal. July 5, 2012). *See* FAC ¶ 72. A district court ruling is, of course, not "controlling precedent." That decision does, however, cite three Ninth Circuit cases discussed further *infra*.

[2] The arbitration agreement (if enforceable and applicable) has an arbitration-venue provision calling for any arbitration to occur in Greensboro, North Carolina: "The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina." Declaration of Eugene Wallace (Docket No. 39-1), ¶ 13.

[3] Defendants did file a motion to compel arbitration with respect to the original Complaint, but the Court vacated that motion when Plaintiffs filed a First Amended Complaint as-of-right. See Docket No. 35.

If that predicate for Defendants' motion falls away, the rest of the motion – as currently presented – crumbles. There may still be a question of whether a court may *permissively* transfer an action to the venue where the arbitration would occur under an agreement, or whether a different type of transfer – for instance, a Section 1404(a) transfer – is available, or even whether this Court should simply go ahead and compel arbitration itself (or deny a request to compel arbitration). But the current motion does not seek, or advocate for, any of these outcomes.

For the same reason, the dispute in the parties' briefs (and the view reflected in the FAC) about whether plaintiff Yang agreed to the arbitration (and venue) provision is irrelevant. The venue provision is irrelevant at this stage because it does not – if the interpretation set forth above is correct – *require* transfer, even if agreed-to, and the arbitration provision is irrelevant because Defendants have not moved to compel arbitration (though questions of arbitrability were raised and discussed in the course of this *transfer* motion). The same is true with respect to the parties' debate about the applicability and scope of Market America's Career Manual's internal dispute resolution procedure: if Defendants are not asking the Court to compel arbitration, the Court has no reason at this time to assess whether the arbitration provision or, instead, some other agreement, would govern the parties' dispute.

As a result, the question of where Ninth Circuit law allows a district court to compel arbitration becomes a crucial threshold issue to the further consideration of this motion. Aside from Plaintiffs' citation, as referenced *supra*, Footnote 1, to *Beauperthuy* in the FAC, Defendants point to the Ninth Circuit's 1941 decision in *Continental Grain Co. v. Dant & Russell*, 118 F.2d 967 (9th Cir. 1941), as support for the proposition that the Ninth Circuit does not allow courts to compel arbitration outside of their home district (and then also cite two district court decisions from within this Circuit that, in transferring the cases, followed the approach Plaintiffs insist is appropriate, and two more district court cases that *dismissed* cases because of a conclusion that they could not compel arbitration out-of-state). *See* Docket No. 39, at 20:10-16, 25:15-20. Plaintiffs, for their part, first cite *Textile Unlimited* – the case Knight & Chernick relies upon to suggest (at least according to one interpretation) that the Ninth Circuit takes the *opposite* view – before then selectively citing language from 9 U.S.C. § 4 (part of the Federal

Arbitration Act ("FAA")),[4] then again citing *Textile Unlimited*, along with citations to *Continental Grain, Bauhinia Corp. v. China Nat'l Mach. & Equip. Imp. & Exp. Corp.*, 819 F.2d 247, 250 (9th Cir. 1987), and a district court case from the Northern District of California. *See* Docket No. 42, at 1:24-26, 10:22-11:3. That is the full extent of the parties' presentation on this issue. An examination of these cases – and at least one other Ninth Circuit decision – is required (along with consideration of how this suit was initiated and the position that Defendants find themselves in as a result).

Textile Unlimited involved a suit "to enjoin an arbitration." 240 F.3d at 783. "Under the circumstances presented by [that] case, [the Ninth Circuit] conclude[d] that the [FAA] does not require venue in the contractually-designated arbitration locale." *Id.* The court concluded that venue was proper in the Central District of California under the general venue statute, 28 U.S.C. § 1391, and that nothing in the FAA required that it be brought "where the contract designated the arbitration to occur." *Id.* at 784. In reaching the conclusion, the Ninth Circuit noted that the Supreme Court had "recently explained [that] the [Federal Arbitration Act's] venue provisions are discretionary, not mandatory," commenting further that the Supreme Court's analysis "pertained to the [Federal Arbitration Act] as a whole." *Id.* (citing *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 194-96 (2000)). "Thus, the venue provisions of the [Federal Arbitration Act] do not supplant the general venue provisions of 28 U.S.C. § 1391(a); rather, they are permissive and supplement those sections." *Id.*

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[4] As Knight & Chernick makes clear, the different approaches on this question each find support in language from Section 4, which provides, in pertinent part, as follows:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement…. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearings and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed….

9 U.S.C. § 4. Plaintiffs quote only the phrase "shall be within the district in which the petition for an order directing such arbitration is filed." Docket No. 42, at 10:19-21.

That being said, the parties could view *Textile Unlimited* as favoring their conclusion by way of that decision's explanation of the result of its analysis of Section 4. Rejecting the argument that venue over an action to compel arbitration in "any place other than the place of arbitration contractually specified is precluded by the § 4 provision that '[t]he hearing and proceedings under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed,'" the Ninth Circuit explained that, "by its terms, § 4 only confines the *arbitration* to the district in which the petition to compel is filed. It does not require that the petition be filed where the contract specified that arbitration should occur." *Id.* at 785. Perhaps the parties are correct, and what this means is that if Defendants want an arbitration to occur in North Carolina, they would have to move or petition to compel that result in that venue.[5] But, as an initial matter, that downplays the clear general instruction from *Textile Unlimited* that the general venue statute is the primary venue rule, with the FAA's venue provisions merely supplementing them. Moreover, as explained further herein, that understanding may not adequately take into account the distinction between a "petition" to compel arbitration (which Section 4 specifically provides for) and a motion to compel arbitration.

Examining *Continental Grain*, that decision does indeed observe that "[t]he statute expressly provides that the hearing and proceeding shall be within the district in which the petition for the order directing the arbitration is filed." 118 F.2d at 968. This Court has reason, however, to question whether *Continental Grain*'s reasoning still rests on solid ground. The decision rejected the appellant's challenge that the district court had no right "to order the arbitration within the district of Oregon because such an order does not conform to the agreement of the parties for an arbitration in New York." *Id.* at 969. In explaining its rejection, the Ninth Circuit offered that "[p]rior to the enactment of the United States arbitration act (1925) such agreements could not be enforced in the courts of the United States." *Id.* From that starting point, it continued that "[i]f there could be any doubt of the power of the legislature to limit the right of arbitration to one conducted within the jurisdiction of the district court ordering the arbitration, it must be dispelled by the consideration that Congress could attach any limitation it desired to the

[5] If true, this leads to the question of why Defendants did not simply initiate an action in North Carolina, petitioning to compel an arbitration there, referencing this case. The Court might ask the parties why that is not an option as opposed to moving to transfer this action.

right to enforce arbitration in the federal courts [and] that it has made a condition that the arbitration be held in the district where the court sits…." *Id.*; *see also Beauperthuy*, 2012 WL 3757486, *5 ("Assuming that the district court finds [a valid agreement and that the agreement encompasses the dispute], the court lacks discretion to do anything other than order arbitration to proceed *according to its terms*. *One term, however, may be disregarded*: under Ninth Circuit precedent, § 4 'confines the arbitration to the district in which the petition to compel is filed.'") (quoting *Textile Unlimited*, 240 F.3d at 785) (emphases added). Of course, when it comes to guessing how the present Supreme Court might resolve the apparent inconsistency in Section 4, this Court imagines there would be little dispute from the parties that the current trend is in respecting and enforcing the parties' agreement as written, notwithstanding courts' and legislatures' attempts to impose conditions on the enforceability of those agreements.

Beyond even that, *Continental Grain* closed this part of its analysis by commenting that "[t]he appellant, having invoked the jurisdiction of the United States District Court for Oregon is hardly in a position to complain that it has exercised that jurisdiction in accordance with the statute giving it jurisdiction." Of course, Defendants did *not* initiate this lawsuit in this forum; Plaintiffs did. If the parties' interpretation of Section 4 is given credence, a plaintiff can force a defendant to either give up rights under a contractual choice-of-forum clause designating that arbitration take place elsewhere or (unless the defendant simply takes the step of filing a competing petition to compel arbitration in the venue housing the purported arbitration locale, *see* Footnote 5, *supra*) engage in at least some measure of litigation efforts (for instance, a relatively-complicated motion to transfer) before finally being able to move to compel such arbitration. In short, this case is somewhat unlike *Continental Grain* given the fact that it is not Defendants' doing that results in this case presently being centered here.

As it relates to Section 4, *Bauhinia Corp.* (the final Ninth Circuit decision the parties rely upon, but a case unmentioned in *Textile Unlimited*) merely quotes the statutory language before concluding that the only place the district court could order arbitration was the Eastern District of California, where the plaintiff had sued and the defendant had moved to compel. *See* 819 F.2d at 248, 250. *Bauhinia Corp.* is the only one of the three Ninth Circuit decisions the parties cite which is procedurally-comparable

to this situation (or at least this situation if indeed Defendants were now moving to compel arbitration): a plaintiff filing suit in a venue other than one containing the location called for by the arbitration agreement, and a defendant moving to compel arbitration in a location outside the venue chose by the plaintiff in its lawsuit. One might understandably see this decision as potentially cementing the issue in favor of the resolution the parties advance here. However, there is one more Ninth Circuit decision to consider.

In 2002 – after the decisions in *Continental Grain*, *Bauhinia Corp.*, and *Textile Unlimited* – the Ninth Circuit, in a published decision, "express[ed] no view as to whether the district court properly compelled arbitration in Chicago, even though the federal action was filed in California," because the appellant had not raised the issue on appeal. *Sovak v. Chugai Pharm. Co.*, 280 F.3d 1266, 1271 n.1 (9th Cir. 2002), *amended by* 289 F.3d 615, 615 (9th Cir. 2002). In offering that hands-off comment, the court provided a citation asking the reader to compare *Continental Grain* with the Fifth Circuit's decision in *Depuy-Busching Gen. Agency v. Ambassador Ins. Co.*, 524 F.2d 1275, 1276-78 (5th Cir. 1975), with *Sovak* offering the following parenthetical description of *Depuy-Busching*: "concluding that § 4 bars ordering arbitration in another judicial district *only when the party seeking to compel arbitration filed the federal suit*." *Sovak*, 280 F.3d at 1271 n.1 (emphasis added). *Sovak* did not mention, or even acknowledge the existence, of *Bauhinia Corp.*

Thus, even if the Court were prepared to conclude – given *Continental Grain*, *Bauhinia Corp.* and the actual language in *Textile Unlimited* – that its initial interpretation of the passage in Knight & Chernick perhaps read too much into the phrasing used, *Sovak* seemingly leaves the door for that interpretation cracked-open. In some sense, that crack can be justified. After all, 9 U.S.C. § 4 provides a basis for a party to *initiate an action* by way of a "petition" in order to get an allegedly-recalcitrant opponent to proceed to arbitration. Even assuming that the parties are correct about how Section 4 should be interpreted, Section 4's terms arguably only apply where that particular procedure is initiated by the same party who is seeking to compel arbitration.[6]

[6] As *Textile Unlimited* itself pointed out, "[b]y its terms, [Section 4] only embraces *actions to compel arbitration*." 240 F.3d at 785 (emphasis added). A *motion* to compel arbitration in response to an *action*

That is – presumably – the point the footnote in *Sovak* was attempting to get across.

In contrast, where a plaintiff – as is the case here – initiates a lawsuit (allegedly in derogation of an arbitration agreement and its venue provision) in a venue other than one that includes the allegedly-appropriate location for an allegedly-applicable arbitration, the defendant is powerless to inform that choice of locations. But the defendant is not powerless to respond to the lawsuit. Although the defendant was given a right, statutorily, to file a "petition" to compel arbitration where there was not yet an active case, where a case has been filed against the defendant, the defendant of course still may (indeed, must, for fear of facing default) respond to the action. Moving the court to compel arbitration – in effect, asking for injunctive relief for specific performance of a contract – is one way in which a defendant can respond. The Court can see no reason why *that* maneuver should be governed by the terms of Section 4, whatever they may say.

In the end, the Court has more than a little bit of doubt about the accuracy of the assertion that Defendants could not simply move – in this case, in this District – to compel arbitration in North Carolina. With that doubt, the Court will not proceed to the other issues raised, relevantly or not, by the instant motion and Plaintiffs' Opposition.

Perhaps the Court is wrong about some or all of the foregoing. The parties can attempt to make that case at oral argument, or in supplemental briefing. But, if not, the Court will not grant the current motion.

The parties should consider the following, however, in connection with their further thoughts about how best to proceed here. If the Court ultimately concludes, after further argument, that it *would* have the authority to compel arbitration in North Carolina and, after briefing on such a motion, grants it, Plaintiffs would seem to have a very interesting issue to present before the Ninth Circuit (and, quite possibly, beyond). Time and money would be spent on that endeavor. They could save themselves that effort and expense by reaching a stipulation here that might include a provision tolling any applicable statute of limitations, and allowing a suit to be filed in the proper forum in North Carolina – either by way of a petition Defendants initiate or a legal action Plaintiffs

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filed by another in court is – at least in literal terms – not an "action to compel arbitration."

file that would allow Defendants to respond with a motion to compel arbitration – that could address the arbitration issue without this potentially-sizable procedural point. The stipulation could include a provision that envisions that case being dismissed, or consensually-transferred to this Court, should the North Carolina court, for whatever reason, decline to enforce the arbitration agreement.