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11 GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

14 GOOGLE INC.,
15
16 Petitioner,
17
18 v.
19 RIVKA SPIVAK,
20
21 Respondent.

Case No. _____

**GOOGLE INC.’S PETITION TO COMPEL
ARBITRATION PURSUANT TO
WRITTEN AGREEMENT TO
ARBITRATE**

[Hearing Date/Time/Dept to be determined after
assignment to Judge or Magistrate]

Supporting Documents:
Memorandum of Points and Authorities;
Declarations of Ariana Tortorici and Michael
Pfyl; Certificate of Interested Parties

TO RESPONDENT RIVKA SPIVAK AND HER COUNSEL:

22 PLEASE TAKE NOTICE THAT on _____, 2015, at ___:___ m., or as soon
23 thereafter as the matter may be heard before this Court in Department/Courtroom No. _____,
24 located at Robert F. Peckham Federal Bldg, 280 S 1st St., San Jose, California, 95113, Petitioner
25 Google Inc. will and hereby does petition the Court to compel to arbitration in Santa Clara
26 County, California all threatened claims of Respondent Rivka Spivak (“Respondent” or “Spivak”)
27 against Petitioner that are subject to the parties’ written, pre-dispute arbitration agreement. This
28 Petition is made pursuant to 9 U.S.C. § 1 *et seq.* and is based on this Petition, the accompanying
Memorandum of Points and Authorities in support hereof, the declarations of Ariana Tortorici
(and the exhibits attached thereto) and Michael Pfyl and any further evidence and argument that

1 may be presented in support of this Petition.

2 **PETITION TO COMPEL ARBITRATION**

3 In support of its Petition to Compel Arbitration pursuant to the Federal Arbitration Act,
4 Google states as follows:

5 **I. THE PARTIES**

6 1. Petitioner Google Inc. is incorporated under the laws of Delaware and its principal
7 place of business is in Mountain View, California. It is thus a citizen of Delaware and California
8 for diversity jurisdiction purposes. 28 U.S.C. § 1332(c)(1).

9 2. Respondent Rivka Spivak is an individual who is a citizen of and domiciled in the
10 State of Washington.

11 **II. JURISDICTION AND VENUE AND INTRADISTRICT ASSIGNMENT**

12 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
13 § 1332 (diversity jurisdiction). Under 9 U.S.C. § 4, a federal court should “look through” the
14 Petition to confirm that there is an independent basis for federal jurisdiction. *Vaden v. Discover*
15 *Bank*, 556 U.S. 49, 58 (2009). In this case, this Petition involves an underlying dispute between
16 citizens of different states, as Petitioner is a corporation incorporated in the State of Delaware
17 with its principal place of business in the State of California, while Respondent is a citizen of the
18 State of Washington. The amount in controversy associated with the claims threatened by Spivak
19 far exceeds \$75,000 exclusive of interest and costs. Respondent is threatening various claims
20 under the Washington Law Against Discrimination and the New York New York State Human
21 Rights Law and has demanded millions of dollars in claimed damages from Petitioner.
22 (Declaration of Michael Pfyl Decl. ¶ 3.) Respondent’s settlement demand confirms that the case
23 satisfies the amount in controversy requirement. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th
24 Cir. 2002) (affirming admission of settlement offer to establish amount in controversy
25 requirement and rejecting argument that settlement offer was inadmissible under FRE 408).

26 4. This Court has personal jurisdiction over the parties because Petitioner resides in
27 this District and because Respondent has expressly consented to personal jurisdiction in this
28 District. The written agreement between Petitioner and Respondent provides that “[t]o the extent

1 that any lawsuit is permitted under this Agreement, I hereby expressly consent to the exclusive
2 personal jurisdiction of the state and federal courts located in California for any lawsuit filed
3 against me by the Company.” (Declaration of Ariana Tortorici, ¶ 3, Exhibit C at § 16(a).)

4 5. In terms of venue, a petition to compel arbitration may be filed in any United
5 States District Court with jurisdiction over the dispute. 9 U.S.C. § 4. Venue is proper in this
6 District because the arbitration agreement between Petitioner and Respondent provides that “[t]o
7 the extent that any lawsuit is permitted under this Agreement, I hereby expressly consent to the
8 exclusive personal jurisdiction of the state and federal courts located in California for any lawsuit
9 filed against me by the Company” and because Respondent agreed to arbitrate in Santa Clara
10 County, California, which is in this District. (Tortorici Decl., ¶ 3, Exhibit C at § 16(a).) Under
11 Civil Local Rule 3-2(e), venue is proper in the San Jose Division of this District for civil actions
12 otherwise arising in Santa Clara County to be assigned to the San Jose Division.

13 **III. BASIS FOR ARBITRATION**

14 6. When Spivak joined Google in April 2010, she agreed to an At-Will Employment,
15 Confidential Information, Invention Assignment, and Arbitration Agreement (“Agreement”). A
16 true and correct copy of this written agreement is attached as Exhibit C to the Declaration of
17 Ariana Tortorici filed in support of this Petition and it is incorporated herein by reference as
18 though fully set forth herein verbatim and in full. Spivak accepted the Agreement through her
19 electronic signature on April 12, 2010. (Tortorici Decl. ¶ 3, Exhibits C and D.) The Agreement
20 includes a plainly labeled arbitration provision, set forth in Section 15 of the Agreement.
21 (Tortorici Decl. ¶ 3, Exhibit C.) The arbitration provision covers all claims arising out of or
22 relating to Spivak’s employment. It provides:

23 I agree that any and all controversies, claims, or disputes with
24 anyone (including the Company and any employee, officer,
25 director, shareholder or benefit plan of the Company in their
26 capacity as such or otherwise) ... arising out of, relating to, or
27 resulting from my employment with the Company ... shall be
28 subject to binding arbitration administered by Judicial Arbitration
and Mediation Services, Inc. (“JAMS”), pursuant to its
Employment Arbitration Rules & Procedures (the “JAMS Rules”).
(Tortorici Decl. ¶ 3, Exhibit C, §15(a).)

7. The Agreement became part of the terms and conditions of the employment

1 relationship between Google and Spivak. The Agreement is subject to the Federal Arbitration
2 Act (9 U.S.C. §§ 1-12) because the employment relationship between Google and Spivak affects
3 “commerce” within the meaning of 9 U.S.C. § 1. The Agreement is part and parcel of the
4 employment relationship by which Google hired Spivak as a Product Manager to help develop
5 and work on versions of software products and tools used by Google and its customers across the
6 country and throughout the world, including advertising optimization platforms that allow
7 publishers and customers to interact and conduct business. (Tortorici Decl. ¶ 4.) And, the
8 Agreement requires a California citizen (Google) to arbitrate disputes with a citizen of
9 Washington (Spivak), through JAMS, a nationwide provider of arbitration services. (Tortorici
10 Decl. ¶ 3, Exhibit C, §15(a).) In short, the FAA applies to the instant Petition.

11 8. A controversy has arisen between Petitioner and Respondent regarding claims
12 subject to the arbitration agreement. Specifically, Spivak has threatened claims, both internally,
13 and externally through her legal counsel, and as recently as June 18, 2015. (Pfyl Decl. ¶ 3.)
14 Those claims include allegations of gender discrimination and retaliation under the Washington
15 Law Against Discrimination and the New York State Human Rights Law. (*Id.*) Spivak claims
16 she received allegedly unfair performance evaluations, was placed on a Performance
17 Improvement Plan, was denied promotion and stock grants, and denied a transfer (to a role in Los
18 Angeles, California). (Tortorici Decl. ¶ 5.) Spivak’s allegations regarding her employment in the
19 State of Washington are attributed primarily to two different managers, both of whom live in the
20 San Francisco Bay Area and both of whom work in Google’s headquarters in Mountain View,
21 California. (*Id.*) Spivak has demanded millions of dollars from Google in claimed economic
22 damages, as well as substantial emotional distress damages. (Pfyl Decl. ¶ 3.) Google denies
23 Spivak’s allegations and monetary demands. (*Id.*)

24 9. Notwithstanding the Agreement, Spivak (through her legal counsel) has stated her
25 position that the arbitration of her claims should proceed in Kings County, Washington, where
26 she currently resides and where her legal counsel is based, instead of the agreed-upon forum of
27 Santa Clara County. (Pfyl Decl. ¶ 4.) “If the written agreement contains a place-of-arbitration
28 clause, then logically, a party’s attempt to arbitrate elsewhere is a refusal to arbitrate under the

1 agreement.” *In re Cintas Corp. Overtime Pay Arbitration Litig.*, 2007 U.S. Dist. LEXIS 5479,
 2 *43-44 (N.D. Cal. Jan. 9, 2007). Spivak’s threatened claims arise under New York and
 3 Washington state law, neither of which require the exhaustion of administrative remedies, so she
 4 is free to commence her threatened claims at any time, and most recently asserted them through
 5 her legal counsel on June 18, 2015. (Pfyl Decl. ¶ 3.) Moreover, Spivak has averred that her New
 6 York claims are at risk under a soon-to-expire statute of limitations and thus by agreement the
 7 parties tolled the New York limitations period through only July 31, 2015. (Pfyl Decl. ¶ 3.) She
 8 continues to fail to demand arbitration in the agreed-upon location of Santa Clara County, where
 9 the designated alternative dispute resolution provider, JAMS, has an office (San Jose). This
 10 Petition is therefore ripe for review.

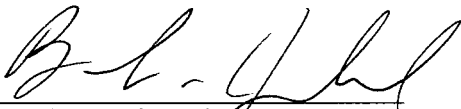
11 **IV. PRAYER**

12 WHEREFORE, Petitioner prays:

- 13 (a) That the Court GRANT Google’s Petition to Compel Arbitration and order
- 14 Respondent Spivak to arbitrate in Santa Clara County, California all threatened claims and causes
- 15 of action subject to the arbitration agreement;
- 16 (b) That the Court order Respondent Spivak to comply with all other terms of the
- 17 arbitration agreement with Google; and
- 18 (c) For such other and further relief as the Court may deem proper.

19 Dated: June 26, 2015

CURLEY, HESSINGER & JOHNSRUD LLP

21 By 
 22 BRIAN L. JOHNSRUD
 23 Attorneys for Petitioner
 24 GOOGLE INC.