

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

AHMAD ALZAIDI,

Plaintiff,

v.

**U-HAUL CO. OF KANSAS, INC.,
U-HAUL INTERNATIONAL, INC., and
ALTON BIRCHELL,**

Defendants.

No. 09-2293-CM

ORDER

Pending before the court is Defendants’ Motion to Compel Arbitration (Doc. 12). Plaintiff argues that the motion should be denied, but if the court cannot deny it outright, he contends that he cannot fully respond to defendants’ motions to compel arbitration without limited discovery on the issue of whether the parties formed a valid and binding contract to arbitrate plaintiff’s claims.

The court has reviewed the briefs and evidence, and finds that under the circumstances of this case, limited discovery on the issue of whether the parties formed a valid and binding contract is appropriate. *See Blair v. Scott Specialty Gases*, 283 F.3d 595, 608–09 (3d Cir. 2002) (remanding case to allow discovery on whether the costs of arbitration would effectively deny the plaintiff a forum, which would render a fee-splitting provision unenforceable). Rather than leaving the motion pending and ordering supplementation, however, the court will deny without prejudice the motion to compel arbitration. *See Dunlap v. Green Tree Servicing, LLC*, No. Civ.A. 2:05-0311, 2005 WL 3178593, at *2–4 (S.D.W. Va. Nov. 28, 2005) (denying motion to compel arbitration without prejudice and permitting discovery, warning the parties that the court was not authorizing a “fishing

expedition”). It is likely that the parties will want to supplement and/or alter their arguments based on the outcome of discovery. Defendants may file a new motion following the close of the limited discovery approved in this Order. The magistrate judge will schedule the limited discovery and rule on any issues governing the discoverability of particular documents. Both parties may conduct discovery on the issue.

IT IS THEREFORE ORDERED that Defendants’ Motion to Compel Arbitration (Doc. 12) is denied without prejudice. The parties may conduct limited discovery on the issue of whether the parties formed a valid and binding contract to arbitrate plaintiff’s claims, to be scheduled by the magistrate judge.

Dated this 22nd day of September 2009, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge