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June 6, 2025

Via E-Mail
The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Skylar Blume et al. v. Starbucks Corporation, et al.
Appellate Case No. 2023-001506
Our File No. 031884.01501

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, Respondent Starbucks Corporation offers the following pertinent authorities which came to counsel's attention after the initial briefs were filed in the above referenced matter. These cases all relate to the enforceability of the Starbucks arbitration agreement, which is also at issue in this case:

1. *Johnson v. Starbucks Corp.*, No. 24-CV-00918-BJR, 2024 WL 4765117 (W.D. Wash. Oct. 11, 2024)

2. *Pradier v. Starbucks Corp.*, No. CV 23-5769, 2024 WL 4346426 (E.D. La. Sept. 30, 2024), *reconsideration denied*, No. CV 23-5769, 2025 WL 35034 (E.D. La. Jan. 6, 2025)

3. *Palmer v. Starbucks Corp.*, 735 F. Supp. 3d 407 (S.D.N.Y. 2024)

4. *Hernandez v. Starbucks Corp.*, No. 56201700497449CUOEVT, 2018 WL 3795581, at *1 (Cal. Super. Ct. July 26, 2018)

5. *Saeedy v. Starbucks Corp.*, No. 22STCV36945, 2023 Cal. Super. LEXIS 53667 (Cal. Super. Ct. Aug. 7, 2023)

Very truly yours,

/s/ Blake T. Williams

Blake T. Williams

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2024 WL 4765117
Only the Westlaw citation is currently available.
United States District Court, W.D. Washington,
at Seattle.

Dion JOHNSON, Plaintiff,
v.
STARBUCKS CORPORATION, Defendant.

Case No. 24-cv-00918-BJR
|
Signed October 11, 2024

Attorneys and Law Firms

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ORDER STAYING LITIGATION PENDING DETERMINATION OF ARBITRABILITY

Barbara Jacobs Rothstein, United States District Court Judge

I. INTRODUCTION

***1** Plaintiff Dion Johnson ("Plaintiff") brings this lawsuit against Defendant Starbucks Corporation ("Starbucks") alleging that the company wrongfully terminated his employment in violation of the Family Medical Leave Act ("FMLA"), Title VII of the 1964 Civil Rights Act ("Title VII"), the Uniform Services Employment and Reemployment Rights Act ("USERRA"), and the Washington Paid Family Medical Leave Act ("WPFMLA"). Currently before the Court is Starbuck's Motion to Compel Arbitration and Dismiss or Stay Litigation. Dkt. No. 13. Plaintiff opposes the motion. Dkt. No. 18. Having reviewed the motion, opposition, and reply thereto, the record of the case, and the relevant legal authority, the Court will grant the motion. The reasoning for the Court's decision follows.

II. BACKGROUND

Plaintiff, a United States Army veteran, began working for Starbucks in June 2018 as a Senior Vendor Services Management Analyst. As a condition of his employment with Starbucks, Plaintiff signed a mutual arbitration agreement on May 30, 2019 ("the Mutual Arbitration Agreement") that provides in relevant part:

> Starbucks and I agree to use binding individual arbitration to resolve any "Covered Claims" that arise between me and Starbucks, its subsidiaries and related companies, and/or any current or former employee of Starbucks or a related company (collectively, "Starbucks"). "Covered Claims" are those brought under any statute, local ordinance, or common law relating to my employment, including those concerning any element of compensation, harassment, discrimination, retaliation, recovery of bonus or relocation benefits, leaves of absence, accommodations, or termination of employment.
>
> **Except as provided herein, I understand and agree that arbitration is the only forum for resolving Covered Claims, and that both Starbucks and I waive the right to a trial before a judge or jury in federal or state court.** The Arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to applicable law.

Dkt. No. 14, Ex. E at 1 (bold in original). Plaintiff does not dispute that he signed the Mutual Arbitration Agreement as a condition of his employment.

Plaintiff alleges that almost immediately after starting his employment at Starbucks, his supervisor began harassing him because he is a veteran. The supervisor also allegedly expressed a preference for employees who do not have children. Plaintiff claims that he eventually submitted a complaint regarding his supervisor's behavior to Starbucks' human resources department, but rather than addressing the problem, the supervisor's harassment and discriminatory behavior only worsened. In fact, Plaintiff alleges that he received his first-ever negative performance review within two weeks after filing the complaint, was eventually placed on a Performance Improvement Plan, and ultimately terminated from his employment. Plaintiff claims that his termination was in retaliation for complaining about his supervisor's behavior and constitutes a willful violation of his rights under FMLA, Title VII, USERRA, and WPFLA.

III. DISCUSSION

A. The Standard of Review

***2** A court must determine two "gateway" issues in deciding whether to compel arbitration: (1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002); *see also*, *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (a court's involvement is generally limited to determining two so-called "gateway" questions of arbitrability: "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue"). In addition, the parties may "agree[ ] to limit judicial involvement even further" by delegating adjudication of these gateway questions to the arbitrator, so long as they do so "clearly and unmistakably". *Acosta v. Brave Quest Corporation*, 2024 WL 3206986, at *3 (C.D. Cal. May 10, 2024) (quoting *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986)). When an agreement "clearly and unmistakably" delegates the threshold issue of arbitrability to the arbitrator, a court must send the question to arbitration. *Rent-A-Center, W. v. Jackson*, 561 U.S. 63, 80 (2010); *see also Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63, 65 (2019) ("When the parties' contract delegated the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract.").

B. The Parties' Arguments

Starbucks moves to compel Plaintiff to arbitrate his claims in accordance with the terms of the Mutual Arbitration Agreement between the parties. Plaintiff opposes the motion, arguing that the Mutual Arbitration Agreement is not enforceable as to his discrimination-based claims because Washington law prohibits an employer from requiring an employee to arbitrate discrimination claims. RCW 49.44.085 states:

> A provision of an employment contract or agreement is against public policy and is void and unenforceable if it requires an employee to waive the employee's right to publicly pursue a cause of action arising under chapter 49.60 RCW or federal antidiscrimination laws or to publicly file a complaint with the appropriate state or federal agencies, or if it requires an employee to resolve claims of discrimination in a dispute resolution process that is confidential.

Starbucks counters that RCW 49.44.085 is inapplicable to this case because the statute only prohibits *confidential* arbitration of discrimination-based claims, and the Mutual Arbitration Agreement does not require confidentiality. Alternatively, Starbucks argues that RCW 49.44.085 is preempted by the Federal Arbitration Act.

C. The Parties Delegated the Issue of Arbitrability to the Arbitrator

Here, the parties "clearly and unmistakably" delegated to the arbitrator the issue of whether Plaintiff can be forced to arbitrate his discrimination-based claims. The Mutual Arbitration Agreement unequivocally provides:

> Starbucks and I agree that the *Arbitrator-and not a court or agency-shall have exclusive authority to resolve any dispute* regarding the formation, interpretation, applicability, enforceability, or implementation of this Agreement, including any claim that all or part of this Agreement is void or voidable.

Dkt. No. 14, Ex. E at 1 (emphasis added).

It is important to note what Plaintiff does not challenge here. He does not dispute that he entered into the Mutual Arbitration Agreement as a condition of his employment. Nor does he contest the validity of the Agreement as a whole or challenge the enforceability of the delegation clause. He also does not claim that the Agreement is void as to all employment-related claims. Rather, he only argues that the Agreement is void as to his discrimination-based claims because RCW 49.44.085 allegedly excludes such claims from mandatory arbitration. This challenge to arbitrability falls squarely within the Agreement's delegation clause and, as such, the arbitrator must resolve the issue. *Rent-A-Center,*

561 U.S. at 80. Thus, this matter must be stayed pending resolution of this issue by the arbitrator.

IV. CONCLUSION

***3** For the foregoing reasons, the Court HEREBY GRANTS Starbucks' motion to stay this litigation pending the arbitrator's determination of arbitrability with respect to Plaintiff's discrimination-based claims. The parties shall file a status report with this Court within thirty (30) days of the arbitrator's decision.

All Citations

Slip Copy, 2024 WL 4765117

2024 WL 4346426
Only the Westlaw citation is currently available.
United States District Court, E.D. Louisiana.

Olivia Antionette PRADIER
v.
STARBUCKS CORPORATION

CIVIL ACTION NO. 23-5769
|
Signed September 30, 2024

Attorneys and Law Firms

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Elvige Cassard Richards, Kristyn Lambert, Ogletree, Deakins, Nash, Smoak & Stewart, New Orleans, LA, for Starbucks Corporation.

ORDER AND REASONS

Janis van Meerveld, United States Magistrate Judge

***1** Before the Court is defendant's Motion to Dismiss or Alternatively, Stay (Rec. Doc. 9) in which defendant argues that this dispute is subject to a binding arbitration agreement. Because there is a valid agreement to arbitrate and plaintiff's claims fall within the scope of the parties' agreement, the parties must be compelled to arbitration and this case must be stayed and administratively closed pending the arbitration. The Court declines to dismiss the action.

Background

This is an employment discrimination lawsuit. Plaintiff Olivia Antionette Pradier alleges that she experienced disability [1] discrimination, gender discrimination, and retaliation while employed at Starbucks Corporation. Her complaint contains no further factual allegations.

Ms. Pradier alleges that she filed a charge with the Equal Employment Opportunity Commission on or around November 2022. She alleges that she received a Right to Sue letter on July 7, 2023. She filed this lawsuit on October 4, 2023.

On December 21, 2023, Starbucks filed the present Motion to Dismiss or Alternatively, Stay. According to Starbucks, [2] Ms. Pradier began applying for a barista position via the Taleo online application process in December 2019. She created an account with her contact information and a unique username and password. While completing the tasks in the Taleo online application, Ms. Pradier was notified that "As of October 2014, Starbucks Corporation requires as a condition of employment for certain positions that the employee will be subject to an arbitration agreement." She completed the application process.

Ms. Pradier received an offer of employment, and before she started, she was required to complete the online Employee Onboarding process via Taleo. Once she accepted her offer, she entered her Social Security number and date of birth and typed her name to electronically sign the "e-Signature Consent" page, indicating her consent to receive and respond to information electronically. Ms. Pradier was also required to view and sign the Mutual Arbitration Agreement as a condition of her employment. To acknowledge review and acceptance of the Mutual Arbitration Agreement, Ms. Pradier entered her account login password to confirm her electronic signature. She completed the Taleo onboarding process and electronically signed the Mutual Arbitration Agreement on December 27, 2019.

The Mutual Arbitration Agreement provides that "Starbucks and I agree to use binding individual arbitration to resolve any 'Covered Claims' that arise between me and Starbucks ...." (Rec. Doc. No. 9-2, at 68). The Agreement defines Covered Claims as "those brought under any statute, local ordinance, or common law relating to my employment, including those concerning any element of compensation, harassment, discrimination, retaliation, recovery of bonus or relocation benefits, leaves of absence, accommodations, or termination of employment." Id.

***2** In opposition to Starbucks' motion, [3] Ms. Pradier states that she does not recall signing any paperwork related to an arbitration agreement. She claims that the exhibits submitted by Starbucks show false electronic submissions. She argues that anyone can create an account and upload her resume and apply to work at stores. She says she did not apply and reapply with corporate stores until she moved back to New Orleans, and she mentions her past work with Starbucks at franchise stores (at least one in a grocery store). She submits that she was told by the hiring manager at the Canal Street store in New Orleans that she could be hired back to a corporate

store. She claims this manager hired her for a supervisor position, that she was never onboarded, and that she started successfully at the store. [4]

Law and Analysis

1. Rule 12(b)(3)

The Fifth Circuit has recognized that a motion seeking dismissal for improper venue under Federal Rule Civil Procedure 12(b)(3) is an appropriate vehicle to seek dismissal based on a forum selection or arbitration clause. [5] Lim v. Offshore Specialty Fabricators, Inc., 404 F.3d 898, 902 (5th Cir. 2005). "On a Rule 12(b)(3) motion to dismiss for improper venue, the court must accept as true all allegations in the complaint and resolve all conflicts in favor of the plaintiff." Braspetro Oil Servs. Co. v. Modec (USA), Inc., 240 F. App'x 612, 615 (5th Cir. 2007).

2. Arbitration Agreements

Starbucks does not explicitly move to compel arbitration, yet it cites the standard for doing so and appears to seek an order compelling arbitration. Upon application of one of the parties, the Federal Arbitration Act requires this Court to stay the judicial proceedings and compel arbitration of any issue referable to arbitration under a written arbitration agreement. 9 U.S.C. § 3; see Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985). Courts conduct a two-step inquiry to determine whether arbitration must be compelled: whether the parties agreed to arbitrate the dispute in question and, if so, whether legal constraints external to their agreement foreclose the arbitration of those claims. Webb v. Investacorp, Inc., 89 F.3d 252, 257–58 (5th Cir. 1996). The determination of whether the parties agreed to arbitrate the dispute requires consideration of "(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." Id. at 258. Whether there is a valid agreement to arbitrate "is governed by ordinary state-law contract principles." Klein v. Nabors Drilling USA L.P., 710 F.3d 234, 236 (5th Cir. 2013)

***3** Under Louisiana law, "[a] contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished." La. Civ. Code art. 1906. "A contract is formed by the consent of the parties established through offer and acceptance." Id. art. 1927. Louisiana state law recognizes the validity of both electronic contracts and electronic signatures. La. Rev. Stat. § 9:2607; Hill v. Hornbeck Offshore Servs., Inc., 799 F. Supp. 2d 658, 661 (E.D. La. 2011) (enforcing "clickwrap" arbitration agreement the employee viewed and signed electronically). Although Louisiana law requires that agreements to arbitrate be in writing, La. Civ. Code arts. 3099-3100, Louisiana courts have not required that the written agreement to arbitrate be signed by both parties where the actions or conduct of the parties show its validity. Marino v. Dillard's, Inc., 413 F.3d 530, 532 (5th Cir. 2005).

3. Analysis

To determine whether this case must be dismissed and the parties compelled to arbitration, the Court first considers whether there is a valid agreement to arbitrate between the parties. The evidence submitted by Starbucks establishes that Ms. Pradier electronically consented to the Mutual Arbitration Agreement when she accepted employment with Starbucks. Her only defense is that she does not recall signing the agreement and that anyone might have uploaded her resume and submitted an application. But her unsubstantiated (and unsworn) assertions do not contradict the evidence showing that she did so.

First, a Starbucks recruiting employee Marangwanda has sworn to have personal knowledge of the facts asserted and the documents attached to the declaration. Marangwanda oversees Starbucks' tracking and onboarding system for employees and manages the Taleo system on a daily basis. Marangwanda's description of the application process and the documents electronically signed during the onboarding process establish not only that Ms. Pradier electronically consented to the Mutual Arbitration Agreement but also that Starbucks required agreement to arbitration as a condition of employment. Second, there is no reason to believe any interloper created an account, submitted an application for employment, accepted employment, and completed the onboarding process. To the contrary, the evidence shows that Ms. Pradier's personal information, including address, phone number, and even Starbucks partner number were entered in creating an account to apply for employment. The evidence also shows that she entered her Social Security number and date of birth when she electronically signed the "e-Signature Consent." This belies Ms. Pradier's claim that "anyone" might have created the online application. And there is no dispute that she ultimately began working for Starbucks at a corporate (as opposed to franchise) store—not only does Marangwanda certify that Ms. Pradier began working at Starbucks on Magazine Street in New Orleans in December 2019 and remained employed in December 2023, but Ms. Pradier's

lawsuit against Starbucks arising out of her employment with Starbucks confirms that she worked for Starbucks. As noted, the evidence shows that Starbucks required agreement to arbitration as a condition of employment. Through her electronic consent and her continued employment with Starbucks, Ms. Pradier manifested her consent to the Mutual Arbitration Agreement. The Court concludes that the parties have a valid agreement to arbitrate.

The Court next concludes that the parties agreed to arbitrate the dispute in question. Claims covered by the Mutual Arbitration Agreement include claims brought under any statute relating to Ms. Pradier's employment, including harassment, discrimination, and retaliation. Ms. Pradier's employment discrimination claims are clearly within the scope of the arbitration agreement.

***4** No legal constraints external to the parties' agreement foreclose arbitration. The Mutual Arbitration Agreement is valid and enforceable, and Ms. Pradier must submit the claims raised in this lawsuit to arbitration. Under the Federal Arbitration Act, this lawsuit must be stayed pending arbitration. Although it might also be appropriate to dismiss this lawsuit as filed in the improper venue, the Court finds that a stay is more appropriate under the circumstances.

Conclusion

Because the parties entered a valid agreement to arbitrate that covers the claims raised in this lawsuit, the parties are hereby compelled to arbitration and this lawsuit is STAYED and administratively closed pending the arbitration. Defendant's Motion to Dismiss or Alternatively, Stay (Rec. Doc. 9) is GRANTED.

All Citations

Slip Copy, 2024 WL 4346426

Footnotes

1 She alleges her disability is a traumatic brain injury.

2 Starbucks has submitted the sworn declaration of Maudi Shamiso Marangwanda, Director of Recruiting US Retail at Starbucks, along with copies of the electronically signed e-Signature Consent and Starbucks Mutual Arbitration Agreement.

3 Ms. Pradier's opposition memorandum was filed a day late. The Court will not strike the opposition on this basis. Ms. Pradier has been experiencing homelessness and other issues making filing more challenging, and the Court minimized any prejudice resulting from the delay by granting Starbucks an extension of time to reply. Additionally, the Clerk of Court marked the opposition memorandum deficient because it did not contain a signature. In the interests of justice, the Court nonetheless considers the arguments raised in the opposition—to the extent relevant.

4 She also explains that she is transgender and that when she was applying/reapplying to a corporate store on Canal Street in New Orleans, she had to give her former name (her "dead name"). She alleges that she experienced transphobic hate and violence while the store was being overseen by a corporate district manager. These allegations to go the merits of her discrimination claims and not to whether the arbitration agreement is enforceable.

5 Defendant acknowledges that the Fifth Circuit has not addressed whether Rule 12(b)(1) is also a proper mechanism to seek dismissal based on an arbitration clause. See Noble Drilling Servs., Inc. v. Certex USA, Inc., 620 F.3d 469, 472 n. 3 (5th Cir. 2010). Nonetheless, defendant seeks dismissal under both Rule 12(b)(1) and 12(b)(3). Because defendant cites no Fifth Circuit case law to support dismissal under Rule 12(b)(1), the Court does not consider this rule. See Sinners & Saints, L.L.C. v. Noire Blanc Films, L.L.C., 937 F. Supp. 2d 835, 845 (E.D. La. 2013) ("Because the Fifth Circuit has endorsed Rule 12(b)(3) as the proper vehicle

to seek dismissal based on either an arbitration or forum-selection clause, the Court will treat Defendants' motion as a 12(b)(3) motion to dismiss for improper venue.")

End of Document

735 F.Supp.3d 407
United States District Court, S.D. New York.

Matthew PALMER, Plaintiff,
v.
STARBUCKS CORPORATION, et al., Defendants.

23 Civ. 6951 (JPC)
|
Signed May 28, 2024

Synopsis

Background: Transgender former employee brought action against employer and individuals in management, alleging discrimination arising from hostile work environment based on gender identity, gender expression, and/or gender and retaliation in violation of Title VII, New York Executive Law, and New York City Administrative Code. Defendants moved to compel arbitration.

Holdings: The District Court, John P. Cronan, J., held that:

[1] employer and employee entered into contractually valid arbitration agreement;

[2] arbitration agreement clearly delegated question of arbitrability to arbitrator; and

[3] defendants did not waive right to arbitration by failing to mention arbitration agreement while claims were before city commission on human rights.

Motion granted.

Procedural Posture(s): Motion to Compel Arbitration; Motion to Stay Proceedings.

West Headnotes (22)

[1] **Alternative Dispute Resolution** Remedies and Proceedings for Enforcement in General

Courts deciding motions to compel arbitration apply a standard similar to the one applicable to a motion for summary judgment, meaning that they can consider relevant evidence outside the complaint.

[2] **Alternative Dispute Resolution** Constitutional and statutory provisions and rules of court

Federal Arbitration Act (FAA) embodies a national policy favoring arbitration founded upon a desire to preserve the parties' ability to agree to arbitrate, rather than litigate, their disputes. 9 U.S.C.A. § 1 et seq.

[3] **Alternative Dispute Resolution** Contractual or consensual basis

Policy in favor of arbitration is limited by the principle that arbitration is a matter of consent, not coercion; specifically, arbitration is a matter of contract, and therefore a party cannot be required to submit to arbitration any dispute which it has not agreed so to submit.

[4] **Alternative Dispute Resolution** Remedies and Proceedings for Enforcement in General

In determining whether to compel arbitration, the court applies a standard similar to that used at summary judgment and must construe all reasonable inferences in favor of the non-moving party.

[5] **Alternative Dispute Resolution** Existence and validity of agreement

Alternative Dispute Resolution Arbitrability of dispute

Federal Courts Alternative dispute resolution

Before compelling arbitration, court performs two-step inquiry that looks at contract law principles governed by state rather than federal law; at step one, court looks to see whether parties entered into contractually valid arbitration agreement, and at step two, the court first asks whether a court or an arbitrator should

decide if the dispute falls within the scope of the agreement to arbitrate.

[6] **Federal Courts** Alternative dispute resolution

Court resolves questions regarding formation of arbitration agreement as it would most any contract dispute: by applying law of state at issue.

[7] **Contracts** Necessity of assent

Basic tenet of contract law, including in New York, is that for contract to be binding, there must be meeting of minds and manifestation of mutual assent, which must be sufficiently definite to assure that parties are truly in agreement with respect to all material terms.

[8] **Alternative Dispute Resolution** Arbitrability of dispute

If an agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue.

[9] **Alternative Dispute Resolution** Arbitrability of dispute

If agreement does not delegate arbitrability issue to arbitrator, then court must determine whether parties' dispute falls within scope of arbitration agreement.

1 Case that cites this headnote

[10] **Alternative Dispute Resolution** Existence and validity of agreement

While parties may agree to arbitrate threshold questions such as whether arbitration clause applies to particular dispute, parties may not delegate to arbitrator fundamental question of whether they formed agreement to arbitrate in first place.

1 Case that cites this headnote

[11] **Alternative Dispute Resolution** Evidence

Party moving to compel arbitration bears initial burden of showing that agreement to arbitrate was made.

[12] **Alternative Dispute Resolution** Writing, signature, and acknowledgment

Employer and employee entered into contractually valid arbitration agreement under New York law, although employee did not recall signing arbitration agreement; as part of pre-application disclosure page, employee as job applicant would have been notified that "all new hires shall be subject to an arbitration agreement as a condition of employment," after employee received offer of employment, he completed employee onboarding process online, and employee only could have proceeded in online onboarding process once he electronically signed arbitration agreement, which in turn only could have occurred after he viewed that document.

More cases on this issue

[13] **Alternative Dispute Resolution** Writing, signature, and acknowledgment

Federal Arbitration Act (FAA) does not require the party moving to compel arbitration to produce a signed copy of the arbitration agreement. 9 U.S.C.A. § 1 et seq.

[14] **Alternative Dispute Resolution** Writing, signature, and acknowledgment

Courts consistently enforce arbitration agreements that were electronically signed.

[15] **Alternative Dispute Resolution** Evidence

Burden falls on party opposing arbitration to demonstrate substantial issue on existence vel non of agreement to arbitrate; this requires party to come forward with at least some evidence to substantiate denial that agreement had been made.

[16] **Alternative Dispute Resolution** Evidence

Under Federal Arbitration Act (FAA), there is general presumption that issue of arbitrability, i.e., question of whether particular issue is to be arbitrated, should be resolved by courts. 9 U.S.C.A. § 1 et seq.

[17] **Alternative Dispute Resolution** Arbitrability of dispute

Just as parties may elect through their contract to have arbitrators, rather than court, resolve categories of disputes between them, they may similarly contract to have arbitrators, rather than court, decide whether particular dispute is to be arbitrated under terms of contract.

[18] **Alternative Dispute Resolution** Arbitrability of dispute

When parties have contracted to submit question of arbitrability of dispute to arbitrators, courts must respect and enforce that contractual choice.

[19] **Alternative Dispute Resolution** Evidence

Courts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.

[20] **Alternative Dispute Resolution** Arbitrability of dispute

Arbitration agreement between former employee and employer clearly delegated question of arbitrability to arbitrator under New York law; agreement contained express delegation language that parties "agree that the Arbitrator—and not a court or agency—shall have exclusive authority to resolve any dispute regarding the formation, interpretation, applicability, enforceability, or implementation of this Agreement, including any claim that all or part of this Agreement is void or voidable."

1 Case that cites this headnote

More cases on this issue

[21] **Alternative Dispute Resolution** Waiver or Estoppel

Employer and individuals in management did not waive right to arbitration by failing to mention arbitration agreement while former employee's claims for hostile work environment and retaliation under Title VII, New York Executive Law, and New York City Administrative Code were before city commission on human rights; mere involvement of administrative agency in enforcement of statute was not sufficient to preclude arbitration. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.; N.Y. Executive Law § 292; New York City Administrative Code § 8-107.

More cases on this issue

[22] **Alternative Dispute Resolution** Waiver or Estoppel

Merely responding to a complaint made to an administrative agency, or engaging in minimal level of litigation, does not rise to the substantial, prejudicial level of activity required to demonstrate waiver of right to arbitration.

Attorneys and Law Firms

***409** Matthew Scott Porges, Law Office of Matthew S. Porges, Esq., Brooklyn, NY, for Plaintiff.

Evan Benjamin Citron, Jackson Lewis P.C., New York, NY, Jamie Haar, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., New York, NY, for Defendants.

OPINION AND ORDER

JOHN P. CRONAN, United States District Judge:

***410** Plaintiff Matthew Palmer brings this action against his former employer, Starbucks Corporation, and several individuals in management at Starbucks, alleging a discriminatory work environment and retaliation, in violation

of Title VII of the Civil Rights Act of 1964, the New York Executive Law, and the New York City Administrative Code. Defendants have moved to compel arbitration, arguing that Palmer's claims are subject to an arbitration agreement. In support, Defendants have presented undisputed evidence of the onboarding process at Starbucks for non-managerial retail employees, showing that Palmer would have been required to electronically sign a document titled "Starbucks Mutual Arbitration Agreement" (the "Arbitration Agreement") in April 2015 before beginning his employment as a barista. Palmer's arguments that he does not recall signing the Arbitration Agreement and that he cannot find an email confirming his execution of that agreement are insufficient to create a genuine dispute of material fact as to whether he entered into an agreement to arbitrate—particularly given his acknowledgement that he filled out paperwork electronically as part of his onboarding. The Court therefore grants Defendants' motion to compel arbitration and stays this action pending arbitration.

I. Background

A. Relevant Facts [1]

1. Palmer's Employment Discrimination Claims

[1] In or around April 2015, Palmer began working at a Starbucks location at 1500 Broadway in Manhattan. Complaint ¶¶ 6-12. The individual Defendants held various managerial roles at the Starbucks: Georgine Bazemore was the assistant manager of the 1500 Broadway location, *id.* ¶ 8, Jessie Brugler was the store's manager, *id.* ¶ 9, and Taz Mbodje was the District Manager for various Starbucks stores, including the one where Palmer worked, *id.* ¶ 10. As alleged, each of these individuals was empowered to make decisions regarding Palmer's employment. *Id.* ¶¶ 8-10.

Palmer began a gender transition process in May 2017 and informed his supervisors and co-workers that he identified as male. *Id.* ¶ 14. Palmer initially changed his first name to Viktor in October 2017 before later changing it to Matthew. *Id.* ¶ 15. Palmer alleges that, after beginning this process, he began to experience harassment from other employees relating to his gender, sex, and gender transition, which continued until close to the point when Palmer's employment was terminated on March 24, 2019.

***411** More specifically, Palmer alleges that, over the course of approximately one-and-a-half years from October 2017 to March 2019, various co-workers repeatedly referred to him by using feminine pronouns, *id.* ¶¶ 22, 25, 27, 33, 50, 52, 56, 62, 69, disclosed his gender transition to customers and other employees, *id.* ¶¶ 48, 52, 62, and asked inappropriate questions about his genitals, surgery, and sexual preferences, *id.* ¶ 69; one co-worker threatened violence and repeatedly mocked him, *id.* ¶¶ 16, 18-19, 21, 25, 30-31; another co-worker inappropriately touched him, *id.* ¶¶ 28-29; another co-worker made derogatory comments to him, *id.* ¶ 44; he received a reduced work schedule, *id.* ¶ 55; and he requested an overnight shift, but two other employees were assigned that shift instead, *id.* ¶ 59. Palmer contends that he reported the alleged harassment to various supervisors at Starbucks who either failed to address the incidents despite some assuring they would or dismissed the incidents as misunderstandings, *id.* ¶¶ 20, 23-24, 26, 32, 34, 36, 38-44, 47-48, 50-53, 72; that he also contacted Partner Resources, a human resources hotline at Starbucks, *id.* ¶¶ 35, 37, 49, 73-75; and that, on May 3, 2018, he filed a report with Starbucks's Ethics and Compliance Department, *id.* ¶ 57. Palmer alleges that these incidents caused him to request a transfer to another Starbucks location, *id.* ¶ 72, and to contemplate suicide, *id.* ¶ 50.

The Complaint also indicates that some performance-related concerns were raised during Palmer's employment. On or about November 30, 2018, Brugler and a manager from another Starbucks store met with Palmer regarding allegations of beverage theft, apparently involving suspected unauthorized use of Palmer's employee number in making purchases. *Id.* ¶ 66. This resulted in Palmer "begrudgingly sign[ing]" "a corrective action form." *Id.* ¶ 67. [2] Then, on or about February 2, 2019, a supervisor yelled at Palmer when he attempted to make a drink for himself before his shift started. *Id.* ¶ 68. On or about March 24, 2019, when Palmer reported for his scheduled shift, Brugler and Bazemore informed Palmer that his employment was being terminated for, according to Palmer, "the minor offenses of allegedly violating Defendant Starbucks' policies by stepping off the floor during his shift to make a beverage which was not properly paid for and by using profanity on the floor," apparently referring to the February 2, 2019 incident. *Id.* ¶¶ 77-78.

2. The Starbucks Onboarding Process and the Arbitration Agreement

Defendants' motion to compel rests on their assertion that Palmer electronically signed an agreement on April 13, 2015, which requires this employment dispute to be heard

in arbitration. As Starbucks's Director of Talent Acquisition, Kathryn Daly is familiar with the company's hiring and employment practices and is responsible for overseeing the company's "applicant tracking and onboarding system for the Company's non-managerial hourly employees." Daly Affidavit ¶¶ 2-4. In her Affidavit, signed under penalty of perjury, *id.* at 9, Daly described in detail the onboarding system for non-managerial retail employees that was in place at Starbucks at the time Palmer applied for his job and was onboarded as a barista. Daly additionally provided specific information regarding Palmer's hiring based on data obtained from the tracking and onboarding system that Starbucks used in 2015, called Retail ***412** Hour Hiring ("RHH"), and maintained by Kronos Inc. ("Kronos"). *Id.* ¶ 4.

From October 1, 2014 through May 22, 2017, which covers the time of Palmer's job application, applicants for retail non-managerial jobs at Starbucks were required to apply through the RHH online application process. *Id.* ¶ 6. Also, on or about October 1, 2014, Starbucks implemented a requirement that, as a condition of employment, all newly hired employees must agree to arbitrate any claims that arise out of their employment, and began informing job applicants of this condition of employment on the online application form. *Id.* ¶ 5.

On March 22, 2015, Palmer submitted an online job application via RHH. *Id.* ¶ 7, Exh. A (first page of the employment application). The online application required Palmer to create an account by providing his first name, last name, and email address, and by selecting a unique username and password. *Id.*, Exh. A. Palmer needed to complete these fields before he could continue with the online application process. *Id.* ¶ 7. Palmer was then directed to the "Pre-Application Disclosures" page. *Id.* ¶ 8, Exh. B (screenshot from the "Pre-Application Disclosure" page). This page expressly advised job applicants that their employment would be subject to an arbitration agreement, stating: "It is Starbucks policy that after October 1, 2014, all new hires shall be subject to an arbitration agreement as a condition of employment." *Id.*, Exh. B. The "Pre-Application Disclosures" page further advised that, "[i]n order to complete this job application," the applicant would "need to give consent to receive and respond to information in electronic form," and that the applicant should click "CANCEL" to decline to give that consent. *Id.* In addition, to continue past the "Pre-Application Disclosures" page, Palmer needed to click a button at the bottom of page that read, "I consent to receive and respond to notices in electronic form." *Id.* ¶ 9, Exh. B. Records maintained by Kronos, attached as Exhibit C to the Daly Affidavit, further reflect that Palmer "consent[ed] to use electronic means to (a) sign this form and (b) receive the Disclosure Statement." *Id.*, Exh. C at 9. In addition, while completing this online application process over the RHH system, Palmer provided personal information including a physical address, an email address (the "Palmer Email"), and a Social Security number. *Id.* ¶ 12.

Palmer subsequently received a job offer with Starbucks. *See id.* ¶ 13. Before commencing work, however, Palmer—like all other non-managerial hourly prospective employees at the time—was required to complete the RHH online "Employee Onboarding" process. *Id.* To complete this process, Palmer was required to log into his RSS account using the username and password he had previously created during the job application process. *Id.* ¶ 14. The online Employee Onboarding form, similar to the job application form, also gave Palmer the option of consenting, or not consenting, to receive and respond to information electronically. *Id.* ¶ 14, Exh. D (screenshot of the "Electronic Consent" section of the Employee Onboarding form). The consent form advised the prospective employee to "close this browser window to cancel the Onboarding process" if the prospective employee wished to decline consent to the electronic transactions. *Id.*, Exh. D. The form further advised that, if the prospective employee should decide at any point during the process to withdraw that consent, the individual would "have to sign a corresponding paper authorization or consent form as needed if [the prospective employee] wish[ed] to continue with the process." *Id.* Further, to proceed with the online Employee Onboarding process, Palmer was required to click on a box that ***413** read, "I consent to receive and respond to notices in electronic form." *Id.* ¶ 16, Exh. D. In addition, the online Employee Onboarding process entailed the prospective employee agreeing to sign documents electronically by "using 'click' signature technology," and acknowledging his intent that "both the signature [he] inscribe[s] with the 'click' signature technology and the electronic record of it to be [his] legal signature to the document." *Id.* ¶ 16, Exh. E. Here too, Palmer was required to click a box reflecting his agreement to these terms to proceed with the online Employee Onboarding process. *Id.* ¶ 16; *see* Exh. E (reflecting field that reads, "Check here to agree").

After electronically signing the Employee Onboarding documents, Palmer was presented with various forms, including the Arbitration Agreement. *Id.* ¶ 17; *see id.*, Exh. F (listing three forms: "W-4," "I-9," and "Arbitration

Agreement"). The introductory language emphasized the need to read each form and attest to its accuracy, before electronically signing:

> The following forms require your electronic signature. The forms contain information that you have provided. You must read each form before signing it and verify the truthfulness and accuracy of all information that you provided in that form. Each form contains an attestation and/or declaration that you must make by signing the form. You sign each form by clicking the "Sign" link associated with that form. By signing each form, you acknowledge that you have read the attestation/ declaration before signing it and you verify and attest to the accuracy of the information that you have provided.

Id., Exh. F. Palmer would not have been able to sign any of these forms, including the Arbitration Agreement, without first viewing the form. *Id.* ¶ 18. As Daly explained:

> Once Plaintiff viewed the document, including the Arbitration Agreement, a "Sign" link appeared giving Plaintiff the option to electronically sign the document .... In other words, the "Sign" link does not appear next to the "View" link until the user opens and views the Arbitration Agreement. The "Sign All" link also cannot be clicked until the user opens and views all forms, including the Arbitration Agreement.

Id.; *see also id.*, Exh. F (screenshot demonstrating the "View" and "Sign" links).

One of these forms was the Arbitration Agreement. The Arbitration Agreement provided, in relevant part:

> Mutual Agreement to Arbitrate. Starbucks and I agree to use binding individual arbitration to resolve any "Covered Claims" that arise between me and Starbucks, its subsidiaries and related companies, and/or any current or former employee of Starbucks or a related company (collectively, "Starbucks"). "Covered Claims" are those brought under any statute, local ordinance, or common law relating to my employment, including those concerning any element of compensation, harassment, discrimination, retaliation, recovery of bonus or relocation benefits, leaves of absence, accommodations, or termination of employment.
>
> **Except as provided herein, I understand and agree that arbitration is the only forum for resolving Covered Claims, and that both Starbucks and I waive the right to a trial before a judge or jury in federal or state court.** The Arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to applicable law.
>
> ***414** Except as provided below, Starbucks and I agree that the Arbitrator — and not a court or agency — shall have exclusive authority to resolve any dispute regarding the formation, interpretation, applicability, enforceability, or implementation of this Agreement, including any claim that all or part of this Agreement is void or voidable.
>
> * * *
>
> At Will Employment Unchanged by this Agreement. Nothing in this Agreement changes or in any manner modifies my employment-at-will relationship with Starbucks. This Agreement shall remain in effect even after the termination of my employment with Starbucks.
>
> * * *

Id., Exh. G ("Arbitration Agreement") at 1 (emphases in original). According to Daly, Palmer electronically signed the Arbitration Agreement after viewing it, either by clicking the "Sign" link next to it or the "Sign All" link below it. *Id.* ¶ 20, Exh. F. This is also reflected in Palmer's RHH file, which shows that he signed the Arbitration Agreement on April 13, 2015, at 11:41 a.m. *Id.* ¶ 21, Exh. H; *see id.* ¶ 21 ("The 'Onboarding' tab in Plaintiff's RHH file could not indicate that he electronically signed the Arbitration Agreement unless Plaintiff clicked on the 'Sign' link next to the Arbitration Agreement or the 'Sign All' link below the Arbitration Agreement while logged in to RHH."). [3]

After Palmer electronically signed the Arbitration Agreement, an email was automatically generated to the Palmer Email, *i.e.*, the email address that Palmer had provided when he established his RHH account, confirming that Palmer had executed the agreement. *Id.* ¶ 22; *see id.* ¶ 7. Palmer's RHH "Email History" records reflect that this confirmation email was sent to the Palmer Email on April 13, 2015. *Id.*, Exh. I. In addition, after electronically signing the Arbitration Agreement, Palmer would have been brought to a page that gave him the option of printing the Arbitration Agreement for his records. *Id.* ¶ 23, Exh. J.

According to Daly, following Palmer's completion of this online Employee Onboarding process, including his execution of the Arbitration Agreement, he began working at Starbucks as a barista in April 2015. *Id.* ¶ 24.

B. Procedural Background

Prior to commencing this action, Palmer brought claims before the New York City Commission on Human Rights and the Equal Employment Opportunity Commission ("EEOC"). *See* Complaint ¶¶ 4-5. Both actions were closed and the EEOC issued Palmer a Right to Sue letter. *See id.* ¶ 5, Exh. A. Palmer then timely filed the instant Complaint on August 7, 2023, asserting three causes of action. Dkt. 1. The first two causes of action are against Starbucks in violation of New York Executive Law Section 292, New York City Administrative Code Section 8-107, and Title VII: (1) discrimination arising from a hostile work environment based on Palmer's "gender identity (transgender), gender expression, and/or gender," Complaint ¶¶ 82-85; and (2) retaliation based on Palmer's "protected activity of complaining of harassment by co-workers," *id.* ¶¶ 86-88. In the third cause of action, he alleges that the individual Defendants "aided, abetted, incited, compelled and/or coerced" Starbucks's discriminatory and retaliatory conduct, in violation of ***415** New York Executive Law Section 296(6) and New York City Administrative Code Section 8-107(6). *Id.* ¶¶ 89-91. As relief, Palmer seeks, *inter alia*, compensatory and punitive damages, as well as injunctive relief clearing his personnel file of any disciplinary action and reinstating his employment. *Id.* at 17.

On January 19, 2024, Defendants filed their motion to compel arbitration, attaching the Daly Affidavit. Dkt. 29 ("Motion"). Palmer opposed the motion on March 1, 2024 and filed a declaration from himself in support of that opposition. Dkts. 32 ("Opposition"), 33. Defendants then filed a reply brief in further support of their motion on March 15, 2024. Dkt. 35.

II. Legal Standards

[2] **[3]** Under the Federal Arbitration Act ("FAA"), a written agreement to arbitrate is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "The FAA embodies a national policy favoring arbitration founded upon a desire to preserve the parties' ability to agree to arbitrate, rather than litigate, their disputes." *Doctor's Assocs., Inc. v. Alemayehu*, 934 F.3d 245, 250 (2d Cir. 2019) (internal quotation marks and brackets omitted); *accord State of N.Y. v. Oneida Indian Nation of N.Y.*, 90 F.3d 58, 61 (2d Cir. 1996). But this "policy in favor of arbitration is limited by the principle that arbitration is a matter of consent, not coercion. Specifically, arbitration is a matter of contract, and therefore a party cannot be required to submit to arbitration any dispute which [it] has not agreed so to submit." *Holick v. Cellular Sales of N.Y., LLC*, 802 F.3d 391, 395 (2d Cir. 2015) (internal quotation marks omitted) (alteration in original); *see Doctor's Assocs.*, 934 F.3d at 250 (explaining that the FAA "intended to place arbitration agreements upon the same footing as other contracts," and arbitration remains "a creature of contract" (internal quotation marks and brackets omitted)).

Pursuant to the FAA, "[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." 9 U.S.C. § 4. Yet, "[i]f the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof." *Id.* Further, unless a "jury trial [is] demanded by the party alleged to be in default, ... the court shall hear and determine such issue." *Id.*

[4] In determining whether to compel arbitration, the Court applies a standard similar to that used at summary judgment and must construe all reasonable inferences in favor of Palmer, the non-moving party. *See Barrows v. Brinker Rest. Corp.*, 36 F.4th 45, 49 (2d Cir. 2022) ("Because motions to compel arbitration are governed by a standard 'similar to that applicable for a motion for summary judgment,' a court must 'draw all reasonable inferences in favor of the non-moving

party.' " (quoting *Nicosia*, 834 F.3d at 229)); *cf. Spinelli v. City of New York*, 579 F.3d 160, 166 (2d Cir. 2009) (explaining that in considering a motion for summary judgment, a court must "resolve all ambiguities, and credit all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment" (internal quotation marks omitted)).

[5] [6] [7] [8] [9] Before compelling arbitration, the Court performs a two-step inquiry that ***416** looks at contract law principles "governed by state rather than federal law." *Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel*, 346 F.3d 360, 365 (2d Cir. 2003). At step one, the Court looks to see whether "the parties enter[ed] into a contractually valid arbitration agreement." *Id.* A "basic tenet of contract law," including in New York, [4] is that for a contract to be binding, there must be "a 'meeting of the minds' and a 'manifestation of mutual assent.' " *Starke*, 913 F.3d at 288-89 (citing *Express Indus. & Terminal Corp. v. N.Y. Dep't of Transp.*, 93 N.Y.2d 584, 693 N.Y.S.2d 857, 715 N.E.2d 1050, 1053 (1999)). "The manifestation of mutual assent must be sufficiently definite to assure that the parties are truly in agreement with respect to all material terms." *Id.* at 289 (citing *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, 52 N.Y.2d 105, 436 N.Y.S.2d 247, 417 N.E.2d 541, 543 (1981)); *accord Express Indus. & Terminal Corp.*, 693 N.Y.S.2d 857, 715 N.E.2d at 1053. At step two, the Court first asks "whether a court or an arbitrator should decide if the dispute falls within the scope of the agreement to arbitrate." *Convergen Energy LLC v. Brooks*, No. 20 Civ. 3746 (LJL), 2020 WL 5549039, at *13 (S.D.N.Y. Sept. 16, 2020). "[I]f the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69, 139 S.Ct. 524, 202 L.Ed.2d 480 (2019). But if it does not, then the Court must determine whether "the parties' dispute fall[s] within the scope of the arbitration agreement." *Nackel*, 346 F.3d at 365.

III. Discussion

A. The Existence of an Agreement to Arbitrate

[10] The threshold question is whether Palmer executed the Arbitration Agreement as part of his onboarding at Starbucks. That is a question for this Court to decide. "While parties may 'agree to arbitrate threshold questions such as whether the arbitration clause applies to a particular dispute, ... parties may not delegate to the arbitrator the fundamental question of whether they formed the agreement to arbitrate in the first place.' " *Hamrit v. Citigroup Glob. Mkts., Inc.*, No. 22 Civ. 10443 (JPC), 2024 WL 1312254, at *5 (S.D.N.Y. Mar. 26, 2024) (quoting *Doctor's Assocs.*, 934 F.3d at 251 and citing *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299-301, 130 S.Ct. 2847, 177 L.Ed.2d 567 (2010)).

[11] Defendants bear the initial burden of showing that an agreement to arbitrate was made. *Barrows*, 36 F.4th at 50 ("[T]his burden does not require the moving party to show initially that the agreement would be enforceable, merely that one existed." (internal quotation marks omitted)); *see also Almacenes Fernandez, S. A. v. Golodetz*, 148 F.2d 625, 628 (2d Cir. 1945); *Blatt v. Shearson Lehman/Am. Express Inc.*, No. 84 Civ. 7715 (CSH), 1985 WL 2029, at *2 (S.D.N.Y. July 16, 1985). Defendants have met this burden.

***417** **[12]** Palmer argues that "there is no evidence that Plaintiff actually signed an arbitration agreement, either by hand or electronically." Opposition at 2. This is inaccurate. As Starbucks's Director of Talent Acquisition, Daly is familiar with the company's hiring procedures and employment policies and practices and has access to onboarding data from the time Palmer applied for and began his job. *See* Daly Affidavit ¶¶ 3-4. In her Affidavit, Daly explained in detail the job application and onboarding processes for non-managerial retail employees, providing various documents demonstrating that process as well as information concerning Palmer's onboarding. She explained that, first, as part of a pre-application disclosure page, Palmer as a job applicant would have been notified: "It is Starbucks policy that after October 1, 2014, all new hires shall be subject to an arbitration agreement as a condition of employment." *Id.* ¶ 8, Exh. B. Then, after Palmer received an offer of employment from Starbucks, he completed the Employee Onboarding process online. *Id.* ¶¶ 13-14. To proceed with that process, Palmer would have consented to receive and respond to notices electronically. *Id.* ¶ 16, Exh. D. Palmer then would have received electronically various forms, including the Arbitration Agreement which expressly provided that arbitration was the only forum to resolve claims relating to employment, "including those concerning any element of ... harassment, discrimination, retaliation, ... or termination of employment." *Id.*, Exh. G. Palmer only could have proceeded in the online Employee Onboarding process once he electronically signed that Arbitration Agreement, which in turn only could have occurred after he viewed that document. *Id.* ¶ 20, Exh. F. In addition to explaining this process in detail, Daly attached excerpts from Palmer's RHH file, which reflects that Palmer electronically signed the Arbitration Agreement on April 13, 2015, at 11:41 a.m. *Id.* ¶ 21, Exh.

H. As Daly explained, "[t]he 'Onboarding' tab in Plaintiff's RHH file could not indicate that he electronically signed the Arbitration Agreement unless Plaintiff clicked on the 'Sign' link next to the Arbitration Agreement or the 'Sign All' link below the Arbitration Agreement while logged in to RHH." *Id.* ¶ 21. In addition, Daly explained that after Palmer electronically signed the Arbitration Agreement, an email was sent to the Palmer Email—an email address that Palmer himself provided during the job application process. *Id.* ¶ 22; *see id.* ¶ 7; *see also* Palmer Declaration ¶ 5 (Palmer acknowledging that the Palmer Email is his email). Palmer's RHH file likewise reflects that the email confirming his execution of the Arbitration Agreement was sent to the Palmer Email. Daly Affidavit ¶ 22, Exh. I.

[13] **[14]** While Defendants have not presented the actual Arbitration Agreement that Palmer signed, "[t]he FAA does not require the Defendants to produce a signed copy of the Arbitration Agreement." *Marcario v. Midland Credit Mgmt., Inc.*, No. 17 Civ. 414 (ADS), 2017 WL 4792238, at *4 (E.D.N.Y. Oct. 23, 2017) (citing *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d 840, 846 (2d Cir. 1987)); *see Weiss v. Am. Express Nat'l Bank*, No. 19 Civ. 4720 (JPO), 2020 WL 6807628, at *2 (S.D.N.Y. Nov. 18, 2020) (granting motion to compel where the nonmovant received the contract agreement, benefited from the contract, and the movant provided a reliable example agreement). Here, the detailed information provided in the Daly Affidavit, combined with the attached exhibits including records from Palmer's RHH file, overwhelmingly establishes that an arbitration agreement existed with Palmer prior to him commencing his employment with Starbucks, even without ***418** Defendants providing the actual signed agreement. *Cf. Barrows*, 36 F.4th at 50 ("[The defendant] produced an arbitration agreement that appears to bear [the plaintiff]'s electronic signature, and thereby cleared this bar."). [5]

[15] The burden then falls on Palmer to "demonstrat[e] a 'substantial issue' on the existence *vel non* of an agreement to arbitrate." *Blatt*, 1985 WL 2029, at *2 (quoting *Almacenes Fernandez*, 148 F.2d at 628). This requires Palmer to come forward "with at least *some evidence* to substantiate [his] denial that an agreement had been made." *Barrows*, 36 F.4th at 50 (cleaned up) (emphasis added) (internal quotation marks omitted); *Oppenheimer & Co. v. Neidhardt*, 56 F.3d 352, 358 (2d Cir. 1995) ("If the party seeking arbitration has substantiated the entitlement by a showing of evidentiary facts, the party opposing may not rest on a denial but must submit evidentiary facts showing that there is a dispute of fact to be tried." (citations omitted)).

Palmer has failed to show a genuine issue of material fact to warrant a summary trial on whether he entered into the Arbitration Agreement. Palmer presents no reason to question the integrity or accuracy of any of the detailed information in the Daly Affidavit regarding the employee application and onboarding process at Starbucks at the time of his application. In fact, Palmer's evidence largely substantiates Starbucks's position, as he concedes that he electronically filled out onboarding paperwork and acknowledges that the email address Starbucks claims to have used to confirm his execution of the Arbitration Agreement is his actual email. Palmer Declaration ¶¶ 2, 5. Palmer instead claims that he does not recall signing an agreement to arbitrate during the hiring and onboarding process. *Id.* ¶ 2. This stated lack of recollection of signing an arbitration agreement is insufficient to create a genuine issue of fact to warrant a trial. *See Barrows*, 36 F.4th at 51 ("Where a party merely states that she cannot *recall* signing an agreement (as opposed to denying she has done so), such a declaration ordinarily fails to create a triable issue of fact.") (citing *F.D.I.C. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 205 F.3d 66, 75 (2d Cir. 2000)); *see also Gonder v. Dollar Tree Stores, Inc.*, 144 F. Supp. 3d 522, 528 (S.D.N.Y. 2015). Nor does Palmer's statement that he cannot find the confirmation email in his inbox create a genuine issue of material fact. *See* Palmer ¶ 5. Palmer's Declaration is dated March 1, 2024, *id.* at 2; it is certainly understandable that he would not be able to find the April 2015 confirmation email nearly nine years after it would have been sent.

Accordingly, Defendants have established that the parties entered into a contractually valid arbitration agreement.

B. Scope of the Arbitration Agreement

[16] **[17]** **[18]** **[19]** Having concluded that the Arbitration Agreement is binding on Palmer, the Court turns to whether that agreement delegates questions of arbitrability to an arbitrator. "Under the FAA, there is a general presumption that the issue of arbitrability," *i.e.*, the question of whether a particular issue is to be arbitrated, "should be resolved by the courts." ***419** *Contec Corp. v. Remote Sol., Co.*, 398 F.3d 205, 208 (2d Cir. 2005); *see First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944-45, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995). However, "[j]ust as the parties may elect through their contract to have arbitrators (rather than a court) resolve categories of disputes between them, they may similarly contract to have arbitrators (rather

than a court) decide whether a particular dispute is to be arbitrated under the terms of the contract." *Metro. Life Ins. Co. v. Bucsek*, 919 F.3d 184, 189-90 (2d Cir. 2019). "[W]hen the parties have contracted to submit the question of the arbitrability of a dispute to arbitrators, courts must respect and enforce that contractual choice." *Id.* at 190. "Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so." *First Options of Chi.*, 514 U.S. at 944, 115 S.Ct. 1920 (quoting *AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986)) (alterations in original).

[20] The Arbitration Agreement clearly delegates the question of arbitrability to the arbitrator. The agreement contains express delegation language: "Except as provided below,[6] Starbucks and I agree that the Arbitrator—and not a court or agency—shall have exclusive authority to resolve any dispute regarding the formation, interpretation, applicability, enforceability, or implementation of this Agreement, including any claim that all or part of this Agreement is void or voidable." Arbitration Agreement at 1. The Supreme Court in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010), considered a nearly identical delegation provision[7] and held that unless an employee "challenge[s] the delegation provision specifically," a court must treat the delegation provision as "valid" and "enforce[able]." *Id.* at 72, 130 S.Ct. 2772; *see also Bar-Ayal v. Time Warner Cable Inc.*, No. 03 Civ. 9905 (KMW), 2006 WL 2990032, at *7-8 (S.D.N.Y. Oct. 16, 2006) (finding a clause providing that "the arbitrability of disputes shall be determined by the arbitrator ... constitutes sufficiently clear and unmistakable evidence that the parties intended to have issues of arbitrability decided by the arbitrator"); *Ahmed v. Citibank, N.A.*, No. 19 Civ. 4439 (MKB) (SJB), 2020 WL 2988666, at *5 (E.D.N.Y. June 2, 2020) (holding that virtually identical delegation clauses "expressly require[ ] that claims regarding the enforceability of the arbitration agreement must be delegated to the arbitrator").

* * *

To summarize, Defendants have established by a preponderance of the evidence the existence of a binding arbitration agreement with Palmer. In response, Palmer has failed to create a genuine issue of fact as to his execution of that ***420** agreement to warrant a summary trial under the FAA. To the contrary, Palmer's evidence only further confirms that he entered into that agreement, as he acknowledges that he electronically completed onboarding paperwork and he confirms the accuracy of the Palmer Email that Starbucks used to confirm his execution of the Arbitration Agreement. Indeed, all the evidence presented to the Court overwhelmingly establishes that Palmer electronically signed the Arbitration Agreement on April 13, 2015 as part of his onboarding process. Defendants also have established that any questions as to the scope of the Arbitration Agreement should be decided by the arbitrator pursuant to the delegation language of that agreement. The Court therefore grants Defendants' motion to compel arbitration.

C. Waiver

[21] **[22]** The Court briefly pauses to address Palmer's complaint that Defendants failed to mention the Arbitration Agreement while his claims were before the New York City Commission on Human Rights. *See* Palmer Declaration ¶¶ 3-4. He argues that it is "truly perplexing" that Defendants would adjudicate these disputes in the City Commission for years, without referencing any arbitration agreement, only now moving to compel arbitration. Opposition at 6. To the extent Palmer is suggesting that Defendants waived their right to now seek enforcement of the Arbitration Agreement, he offers no legal basis for this Court to find waiver or otherwise estop Defendants from relying on that agreement. Indeed, the Supreme Court has explained that "the mere involvement of an administrative agency in the enforcement of a statute is not sufficient to preclude arbitration." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28-29, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991). And "[m]erely responding to a complaint made to an administrative agency, or engaging in the minimal level of litigation undertaken by [Defendants], does not rise to the substantial, prejudicial level of activity required to demonstrate waiver in this Circuit." *Gonder*, 144 F. Supp. 3d at 529; *see id.* ("[The defendant]'s participation in the EEOC and [New York State Division of Human Rights] investigations, while engaging [the plaintiff]'s claims on their merits, is not considered 'litigation' for the purposes of determining waiver."). And in any event, to the extent Palmer seeks to argue waiver or delay, those arguments are appropriately made to the arbitrator. *See Empire Asset Mgmt. Co. v. Best*, No. 21 Civ. 1798, 2022 WL 893402, at *1 (2d Cir. Mar. 28, 2022) (summary order) (affirming the district court's conclusion that broad language in an arbitration agreement that "controversies under or relating to any activity or this agreement ... shall be determined by arbitration" committed the plaintiff's statute of limitations defense to the arbitrator); *see also Moses H. Cone Mem'l*

Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, [including] an allegation of waiver, delay, or a like defense to arbitrability.").

D. Stay Pending Arbitration

In addition to seeking an order compelling arbitration, Defendants ask the Court to dismiss this action or, alternatively, to stay it pending arbitration. Motion at 1, 13-14. Palmer requests that, if this Court were to compel arbitration, the Court stay this action pending the outcome of arbitration. Opposition at 6-7. The Supreme Court recently made clear that "[w]hen a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels ***421** the court to stay the proceeding." *Smith v. Spizzirri*, 601 U.S. 472, 478, 144 S. Ct. 1173, 218 L.Ed.2d 494 (2024); *accord Katz v. Cellco P'ship*, 794 F.3d 341, 345 (2d Cir. 2015) ("We ... consider a stay of proceedings necessary after all claims have been referred to arbitration and a stay requested. The FAA's text, structure, and underlying policy command this result."). Accordingly, the Court stays this action pending arbitration.

IV. Conclusion

In sum, Defendants have shown by a preponderance of the evidence the existence of an executed arbitration agreement with Palmer, which contains language delegating questions of scope and enforceability to the arbitrator. Palmer has not shown a genuine issue of fact relating to this evidentiary showing, nor can he avoid arbitration by making a generalized complaint of delay. As such, the Court grants Defendants' motion to compel arbitration and stays this action pending that arbitration.

SO ORDERED.

All Citations

735 F.Supp.3d 407

Footnotes

1 The facts recited herein are taken from the allegations in the Complaint, Dkt. 1 ("Complaint"), and documents attached thereto or incorporated by reference therein; the Affidavit of Kathryn Daly, Starbucks's Director of Talent Acquisition, which was submitted by Defendants in support of their motion to compel, Dkt. 29-2 ("Daly Affidavit"); and Palmer's Declaration, which he submitted in opposing the motion, Dkt. 33 ("Palmer Declaration"). "Courts deciding motions to compel [arbitration] apply a standard similar to the one applicable to a motion for summary judgment," meaning that they can consider relevant evidence outside the complaint. *Starke v. SquareTrade, Inc.*, 913 F.3d 279, 281 n.1 (2d Cir. 2019). "On a motion for summary judgment, the court considers all relevant, admissible evidence submitted by the parties and contained in the pleadings, depositions, answers to interrogatories, admissions and affidavits, and draws all reasonable inferences in favor of the non-moving party." *Id.*; *accord Meyer v. Uber Techs., Inc.*, 868 F. 3d 66, 74 (2d Cir. 2017); *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 229 (2d Cir. 2016).

2 In addition, on or about October 5, 2018, Plaintiff was interviewed by Mbodje and a Starbucks investigator about financial loss at the store. Complaint ¶ 64.

3 In a December 7, 2023 letter to the Court in anticipation of their motion to compel arbitration, Defendants note that "a technical issue has precluded Starbucks from recovering the [Arbitration] Agreement containing Plaintiff's electronic signature." Dkt. 23 at 2.

4 A court "resolve[s] such agreement-formation questions as [it] would most any contract dispute: by applying the law of the state at issue." *Barrows*, 36 F.4th at 50 (citation omitted). The parties appear in agreement that New York substantive law on the formation of a contract applies. *See* Motion at 9; Opposition at 2. In light

of that apparent consent, the Court applies New York substantive law to the question of whether the parties formed a contract. *See* *Texaco A/S v. Com. Ins. Co.*, 160 F.3d 124, 128 (2d Cir. 1998) ("[W]here the parties have agreed to the application of the forum law, their consent concludes the choice of law inquiry." (quoting *Am. Fuel Corp. v. Utah Energy Dev. Co., Inc.*, 122 F.3d 130, 134 (2d Cir. 1997))).

5 Palmer does not appear to challenge the validity of the Arbitration Agreement on the basis that it would have been electronically signed. *See generally* Opposition. To be sure, however, courts consistently enforce arbitration agreements that were electronically signed. *See*, *e.g.*, *Armstead v. Starbucks Corp.*, No. 17 Civ. 1163 (PKC), 2017 WL 5593519, at *5-6 (S.D.N.Y. Nov. 17, 2017) (enforcing Starbucks's Arbitration Agreement to compel arbitration in a wage-and-hour suit).

6 Certain exceptions to the mediator's exclusive authority are articulated in the Arbitration Agreement, none of which is relevant here. The agreement provides that a court shall decide "[a]ny question or dispute concerning the scope or validity of" a provision that requires claims to be brought only on an individual basis and waives the employee's right to pursue class, collective, consolidated, or representative claims. Arbitration Agreement at 1. The Arbitration Agreement further notes that, under the National Labor Relations Act, the employee "may be entitled to act concertedly or cooperate with others to challenge this agreement in any forum." *Id.*

7 The delegation provision in *Rent-A-Center* stated that "[t]he Arbitrator ... shall have exclusive authority to resolve any dispute relating to the ... enforceability ... of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable." 561 U.S. at 68, 130 S.Ct. 2772 (alterations in *Rent-A-Center*).

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2018 WL 3795581 (Cal.Super.) (Trial Order)
Superior Court of California.
Ventura County

Marie HERNANDEZ,
v.
STARBUCKS CORPORATION, et al.

No. 56-2017-00497449-CU-OE-VTA.
July 26, 2018.

Minute Order

Gregory W Knopp, present for defendant(s).

Kenneth Yoon is present on behalf of plaintiff.

Matthew P. Guasco, Judge.

***1** DATE: 07/26/2018

TIME: 08:20:00 AM

DEPT: 20

CLERK: Eleanor Barcenas

REPORTER/ERM: LORI BEAN KING CSR# 13602

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion to Compel Arbitration

MOVING PARTY: Teavana Corporation, STARBUCKS CORPORATION

CAUSAL DOCUMENT/DATE FILED: Motion - Other to Dismiss or, in the Alternative, Compel Arbitration, 05/11/2018

Pursuant to the stipulation of the appearing parties and agreement of the certified shorthand reporter, the Court orders the reporter appointed to serve as an official reporter pro tempore in this matter.

Counsel have received and read the court's written tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

For reasons more fully discussed below, the Court GRANTS IN PART the motion to compel binding arbitration of plaintiff's individual claims for unpaid wages (Labor Code, § 558) and payment of the minimum wage (Labor Code, § 1197.1.) The Court DENIES the motion to compel plaintiff's Private Attorney General ("PAGA") claims in her capacity as representative of similarly situated employees.

Arbitration Agreement

It is materially undisputed that the parties are bound to submit plaintiff's individual employment claims to binding arbitration pursuant to a legally enforceable contract. Any such dispute was resolved in defendants' favor in the companion case of *Hernandez v. Starbucks Corporation, et al.*. Ventura Superior Court Case number 56-2017-00494208-CU-OE-VTA, in which the court granted defendants' motion to compel binding arbitration of plaintiff's individual employment claims. The Court takes judicial notice of that case and ruling. (Evid. Code, § 452, subd. (d).) That ruling is conclusive in this proceeding pursuant to the doctrines of collateral estoppel and res judicata. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 272 Cal.Rptr. 76, 795 P.2d 1223.)

Waiver

The Court finds that defendants have not waived their right to compel binding arbitration of plaintiff's individual (as opposed to representative PAGA) claims. Under both the Federal Arbitration Act ("FAA") and California state law, there is "a strong policy favoring arbitration agreements," thus requiring "close judicial scrutiny of waiver claims." (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1195, 8 Cal.Rptr.3d 517, 62 P.3d 727.) "…[W]aivers are not to be lightly inferred and the party seeking to establish a waiver bears a heavy burden." (*Ibid.*) Here, plaintiff has not met her "heavy burden" of demonstrating defendants' conduct amounted to a waiver. Certainly, there is no express waiver. Defendants obtained an order compelling arbitration in the companion case, and notified plaintiff in writing of their intention to arbitrate plaintiff's claims not long after the filing of this action. Defendants' actions in this case of delaying the motion to compel arbitration for approximately a year and engaging in discovery and motion practice are not so inconsistent with binding arbitration as to constitute a waiver thereof. (*St. Agnes Medical Center v. PacifiCare of California*, *supra*, 31 Cal.4th at p. 1196, 8 Cal.Rptr.3d 517, 62 P.3d 727.) Certainly, part of the delay can be attributed to litigation of the contested motion to compel binding arbitration in the companion case, which did not produce a resolution until November, 2017. The discovery in which the parties engaged pending the instant motion to compel arbitration was not substantially beyond that which might have been expected if the action had proceeded to arbitration sooner. The law simply does not support a waiver of the arbitration agreement in this case.

PAGA and Individual Claims

***2** The Court does not compel arbitration of the representative PAGA claims. To the extent that the arbitration agreement contains or is construed to include a waiver of any representative claims plaintiff might advance under PAGA, any such provision is not enforceable under California law and public policy. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 384, 173 Cal.Rptr.3d 289, 327 P.3d 129 ("*Iskanian*").) The Court, therefore, exempts any representative PAGA claims plaintiff may have on behalf of the state arising from the individual claims she has which are subject to arbitration. The individual claims must be arbitrated. The representative PAGA claims are not subject to arbitration.

The parties dispute whether and to what extent plaintiff's claims for unpaid wages pursuant to Labor Code section 558, subdivision (a), and for payment of the minimum wage pursuant to Labor Code section 1197.1, subdivision (a), are subject to compelled arbitration or are carved out as PAGA claims. There is a split of appellate authority in California on this topic. This Court must decide which line of authority best represents the majority view of California law. (See *Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 20 Cal.Rptr. 321, 369 P.2d 937.) In *Esparza v. KS Industries* (2017) 13 Cal.App.5th 1228,

221 Cal.Rptr.3d 594 ("*Esparza*"), the Court of Appeal, Fifth District, concluded that an employee's claim for unpaid wages under Labor Code section 558, subdivision (a), is one for "victim-specific" relief as opposed to "civil penalties" for purposes of bringing it outside PAGA and subject to compelled arbitration. (*Esparza*, *supra*, 13 Cal.App.5th at p. 1245-46, 221 Cal.Rptr.3d 594.) The *Esparza* court reached this conclusion on the basis that a claim for unpaid wages under Labor Code section 558, subdivision (a), results in a monetary recovery directly to the aggrieved employee, citing subdivision (a)(3), of that statute. (*Ibid.*) This is a private right to recover damages which the employee and employer have agreed shall be privately arbitrated. (*Ibid.*)

The Court of Appeal, Fourth District, Division 1, reached the opposite conclusion in *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 227 Cal.Rptr.3d 613 ("*Lawson*"). The *Lawson* court expressly parted company with the *Esparza* court, reasoning that an aggrieved employee who brings an action for unpaid wages under Labor Code section 558, subdivision (a), satisfies a procedural prerequisite to the imposition of civil penalties both individually and as a representative of similarly situated employees. (*Lawson*, *supra*, 18 Cal.App.5th at pp. 721-723, 227 Cal.Rptr.3d 613.) Accordingly, the *Lawson* court concluded that actions for unpaid wages under Labor Code section 558, subdivision (a), are not for victim-specific relief (subject to private arbitration), but are for civil penalties (subject to the PAGA exemption from arbitration).

The Court concludes that the *Esparza* line of authority is most in keeping with the majority view in California. As the United States Court of Appeals for the Ninth Circuit recently held, *Esparza*, and not *Lawson*, is most in keeping with *Iskanian*. (*Mandiwala v. Five Star Quality Care, Inc.* (9th Cir., 2/2/18) 2018 W.L. 671138, p. 2.)[1] Following *Esparza*, as well as the reasoning of *Iskanian*, the Court concludes that plaintiff's individual claims for unpaid wages under Labor Code section 558, subdivision (a), and payment of minimum wage under Labor Code section 1197.1, subdivision (a) are subject to private binding arbitration pursuant to the agreement.

Finally, the Court must rule on the parties' competing requests concerning which should proceed first: the arbitration of plaintiff's private, victim-specific damages claims or plaintiff's representative PAGA claims for civil penalties (which are exempt from arbitration)? Code of Civil Procedure section 1281.4 provides that a court granting a petition to compel arbitration "shall" stay the action or proceeding pending completion of the arbitration. Weighing the parties' competing requests and the relative equities and efficiencies associated with them, the Court exercises its discretion to STAY the representative PAGA claims pending the completion of arbitration proceedings concerning plaintiff's individual, victim-specific claims. This approach is most in keeping with the parties' arbitration agreement and judicial economy. In particular, whether plaintiff is an "aggrieved person" is a foundational element of her PAGA claims which can only be resolved in the arbitration proceeding. (See Lab. Code, § 2968, subd. (c).) Accordingly, the PAGA claims in the action are hereby STAYED pending successful completion of the arbitration of plaintiff's individual, victim-specific claims. (See *Esparza*, *supra*, 13 Cal.App.5th at p. 1247, 221 Cal.Rptr.3d 594.)

***3** The Court DENIES defendants' motion to dismiss plaintiff's claims under Labor Code sections 558 and 1197.1 in light of the above ruling compelling arbitration and staying this action as to those claims.

Counsel for defendants shall serve and file a notice of ruling and proposed order consistent with the above. /n

[1] The plaintiff in *Mandiwala* filed a petition for writ of certiorari with the United States Supreme Court on March 26, 2018, which was subsequently denied. (2018 WL 1509649, U.S., June 25, 2018.)

Notice to be given by Mr. Knopp.

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Saeedy v. Starbucks Corp.

Superior Court of California, County of Los Angeles

August 7, 2023, Decided

22STCV36945

Reporter
2023 Cal. Super. LEXIS 53667 *

NOAH SAEEDY v. STARBUCKS CORPORATION, et al.

Notice: THIS DOCUMENT INCLUDES THE ORDER OF THE COURT. OTHER MATERIALS, SUCH AS LEGAL MEMORANDA, MAY HAVE BEEN INCLUDED BY THE COURT. DOCUMENTS THAT ARE COMBINED AND FILED AS ONE DOCUMENT BY THE COURT ARE PUBLISHED AS ONE DOCUMENT.

Core Terms

tentative ruling, arbitration, motion to compel arbitration, arbitration agreement, compel arbitration, PROCEEDINGS, terms

Counsel: [*1] For Defendant(s): Danielle S. Zobel by LACourtConnect.

Judges: Michael Small, Judge.

Opinion by: Michael Small

Opinion

NATURE OF PROCEEDINGS: Hearing on Motion to Compel Arbitration; Case Management Conference

Pursuant to *Government Code sections 68086*, *70044*, and *California Rules of Court, rule 2.956*, Jasmine Jamili, CSR # 13742, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court's tentative ruling is posted online for the parties to view prior to the hearing.

The matters are called for hearing.

Both sides submit to the Court's tentative ruling by e-mail.

The tentative ruling is adopted as the final order of the Court.

The Defendant's Motion to Compel Arbitration filed by STARBUCKS CORPORATION on 02/02/2023 is Granted.

Starbucks' motion to compel arbitration is granted. Plaintiff signed an arbitration agreement at the start of his employment with Starbucks. The agreement thus exists. Plaintiff's argument to the contrary is wrong. Further, the agreement plainly covers Plaintiff's claims against Starbucks.

Plaintiff's argument that the agreement is both procedurally and substantively unconscionable is at odds with California **[*2]** precedent.

Plaintiff's argument that Defendant Sarah Baker cannot invoke the arbitration agreement is mistaken. By its terms, the agreement applies to actions against Starbucks' employees, such as Baker, not just to actions against Starbucks itself. Baker need not have actually signed the agreement to be covered by it. In any event, Baker is a third party beneficiary of the agreement and, for that reason, did not have to sign it.

In light of the Court's decision to grant the motion to compel arbitration, the case is stayed pending the outcome of the arbitration. The Court is setting a hearing on the status of the arbitration for May 7, 2024 at 8:30 a.m.

The case is ordered stayed pending binding arbitration as to the entire action.

Post-Arbitration Status Conference is scheduled for 05/07/2024 at 08:30 AM in Department 57 at Stanley Mosk Courthouse.

Defendant is to give notice.

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