STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
MEGHAN GAFFNEY, Plaintiff, v. THE GREENVILLE COUNTY SHERIFF'S OFFICE, GREENVILLE COUNTY, AND ALORICA, Defendants.	))))))))))	C.A. No. 2020-CP-23-00906

ORDER COMPELLING ARBITRATION

THIS MATTER comes before the Court upon Defendant Alorica, Inc.'s ("Alorica") Motion to Compel Arbitration. The matter was heard on June 11, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via videoconference with a Court Reporter. At the hearing, Plaintiff was represented by Josh Hawkins, Esquire of Hawkins & Jedziniak, LLC, Alorica was represented by T. Chase Samples, Esquire and John Connell, Esquire of Jackson Lewis, P.C, and Greenville County and Greenville County Sheriff's Office were represented by Charles Turner, Esquire of Wilson Jones Carter & Baxley, P.A. The record before the Court included Plaintiff's Complaint, Alorica's Motion with a Memorandum, Exhibits, and Affidavit as well as Plaintiff's Memorandum and Affidavit.

After careful consideration of this Matter, the record before the Court, arguments of counsel, and in the interest of equity, this Court finds and concludes that Alorica's Motion to Compel Arbitration should be and is hereby **GRANTED**, as more fully set forth below.

BRIEF STATEMENT OF FACTS

A. Plaintiff's Arbitration Agreement with Alorica

Plaintiff was hired by Alorica on or around July 16, 2016. As a condition of her employment with Alorica, Plaintiff entered into an arbitration agreement (the "Agreement"), which she signed electronically before her employment commenced. Under the Agreement, Plaintiff and Alorica agreed that any and all disputes regarding Plaintiff's employment with Alorica would be resolved through arbitration. Specifically, the Agreement sets forth, in pertinent part, that:

> All disputes, claims, or controversies arising out of or relating to your employment by the Company, the termination of your employment by the Company, and/or this Offer Letter, and any claims or disputes as to the scope and enforceability of this arbitration agreement, shall be resolved exclusively by final and binding arbitration.
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> Arbitration pursuant to this Agreement shall be held within the Federal Judicial District in which You are or were last employed by the Company and shall be conducted pursuant to the JAMS Employment Arbitration Rules, copies of which may be obtained at www.jamsadr.com, from your on-site Human Resources Department, or by request directed to the Office of General Counsel, Alorica Inc., 5 Park Plaza, Suite 1100, Irvine CA 92614. The Company agrees to bear all but the first $350 of the arbitration filing fee.
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> . . .
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> You and the Company agree that any dispute or controversy arising out of or in any way related to your employment, or the termination of your employment, which cannot be resolved by use of the Company's internal grievance procedures or by good faith negotiation between the parties, will be resolved by final and binding arbitration as provided herein. You and the Company voluntarily and irrevocably waive any and all rights to have any such dispute decided in court or by a jury.

Plaintiff alleges in her affidavit that "at the time of applying and orientation, it was a group setting, we were never explained what we were signing we were just instructed to sign." Alorica, however, submitted an affidavit from its Senior Director of Talent Acquisition, Judith Gangi. In her affidavit, Ms. Gangi described in detail the process upon which Alorica provides new-hire paperwork,

including an agreement to arbitrate, to new hires. Specifically, Ms. Gangi stated in her affidavit that after Alorica makes the decision to hire an individual, Alorica submits a request through Taleo, a third-party processing server, to manage the paperwork. Ms. Gangi further stated in her affidavit that prior to the employee completing the new-hire documents, Taleo requires the employee to create a username and password so that the new hire can electronically sign the documents. Taleo subsequently provides the new hire an email with a website link to the Company's Taleo website to accept the offer and complete the new hire onboarding documents, including an agreement to arbitrate. Ms. Gangi confirmed in her affidavit that the Taleo records indicated that Plaintiff received the Agreement on July 16, 2016, and that she electronically signed it on that same day. Ms. Gangi also attached to her affidavit a copy of a screenshot of Plaintiff's actions in the Taleo system, including the date (and exact time) she received and signed the Agreement.

B. Plaintiff's Allegations against Alorica.

Plaintiff's Complaint alleges, in part, that on February 26, 2019, Plaintiff was at work when her supervisor called her into a meeting with human resources. When Plaintiff entered the meeting, Alorica's local manager, Juanita Harrison, told her that she was misusing leave under the Family Medical Leave Act ("FMLA"). Plaintiff inquired into Alorica's allegations that she had misused her FMLA leave but, allegedly unable to provide proof, Alorica, instead, indicated that Plaintiff would be terminated as a result of her boyfriend's arrest on February 11. Plaintiff asserts three causes of action against Alorica including (1) Violation of the South Carolina Payment of Wages Act; (2) Wrongful and Retaliatory Discharge in Violation of Public Policy; and (3) Violation of the South Carolina Human Affairs Law.

LEGAL STANDARD

The Court should give due regard to both the federal and the South Carolina policies favoring arbitration and resolve any doubts about the enforceability of an arbitration agreement in favor of arbitration. *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 596-97, 533 S.E.2d 110, 118 (2001) ("Beginning in the mid-1980's, the United States Supreme Court, interpreting the [Federal Arbitration Act], essentially 'federalized' the law of arbitration by expanding the reach of the FAA to the full breadth of the Commerce Clause."). Under the FAA,

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be 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 (2010). Furthermore, a court must stay "any suit or proceeding" pending arbitration of "any issue referable to arbitration under an agreement in writing for such arbitration." 9 U.S.C. § 3. *See also* S.C. Code Ann. § 15-48-20 (noting that court shall order parties to arbitrate on application showing arbitration agreement and one party's refusal to arbitrate). In so doing, a court should give due regard to both the federal and the South Carolina policies favoring arbitration and resolve any doubts in favor of arbitration. *See Zabinski*, 346 S.C. at 596 ("The policy of the United States and South Carolina is to favor arbitration of disputes."). "Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered." *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491, 689 S.E.2d 602, 603-04 (S.C. 2010).

LEGAL ANALYSIS

In determining whether to compel arbitration, this Court is required to evaluate (1) whether the Federal Arbitration Act applies; (2) whether the parties formed a valid and binding arbitration

agreement; and (3) whether the agreement covers Plaintiff's claims. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 843 (Ct. App. 1999).

a. The Agreement involves interstate commerce and is governed by the Federal Arbitration Act.

"For the FAA, 9 U.S.C.S. § 1, et seq., to apply, an agreement must evidence a transaction involving commerce, specifically interstate commerce." *Towles*, 338 S.C. at 35-36, 524 S.E.2d at 843 (Ct. App. 1999) (citing 9 U.S.C.A. § 2, (1999)); *see also Soil Remediation Co. v. Nu-Way, Envtl., Inc.*, 323 S.C. 454, 460, 476 S.E.2d 149, 152 (1996). "The terms 'involving commerce' amount to the functional equivalent of 'affecting commerce' and signal 'an intent to exercise Congress' commerce clause power to the full." *Id*. (citing *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 277, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995)); *see also Mathews v. Fluor Corp.*, 312 S.C. 404, 407, 440 S.E.2d 880, 881 (1994) ("The requirement that the underlying transaction involve commerce is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause."); *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (S.C. 2001) ("Beginning in the mid-1980's, the United States Supreme Court, interpreting the FAA, essentially 'federalized' the law of arbitration by expanding the reach of the FAA to the full breadth of the Commerce Clause.").

Courts construing the language of Section 2 of the FAA in the context of an employment relationship have focused on the nature of the defendant-employer's business. *Cox v. Assisted Living Concepts, Inc.*, No. 6:13-747-JMC-KFM, 2013 U.S. Dist. LEXIS 186127, at *8 (D.S.C. Nov. 19, 2013). In this case, and as alleged in the Complaint, Alorica is a California corporation with employees and customers across the country, including in South Carolina. Plaintiff worked for Alorica in South Carolina as a customer service representative in a call center, and, in this role, she fielded calls from Alorica's customers nationwide and worked with Alorica employees in other

states. Accordingly, this Court finds and concludes that Plaintiff's employment involves interstate commerce and, consequently, the Agreement is governed by the FAA, 9 U.S.C. § 2. *See Lucey v. Meyer,* 401 S.C. 122, 138 (Ct. App. 2012) (finding that interstate commerce was involved in dispute between South Carolina law firm and South Carolina lawyer where firm performed work in other states); *Cox,* 2013 U.S. Dist. LEXIS 186127, at *8-9 (finding that the employment relationship involved interstate commerce because the defendant-employer was a Nevada corporation that operated in South Carolina); *Brown v. Ryan's Family Steak Houses, Inc.*, No. 2:03-2582-PMD, 2004 U.S. Dist. LEXIS 27456, at *7 n.3 (D.S.C. Feb. 27, 2004) ("Ryan's is a Delaware corporation headquartered in South Carolina, with over 300 restaurants in 22 states. Further, Ryan's is involved in the interstate procurement of food products and advertising. This is certainly sufficient to satisfy the interstate commerce requirement of the FAA."); *King v. IBEX Global*, No. 2:15-cv-07236, 2015 U.S. Dist. LEXIS 142178, at *8 (S.D. W. Va. Oct. 20, 2015) (concluding that "the plaintiff's employment constitutes a transaction involving interstate commerce" because the defendant-employer was headquartered in a different state from the plaintiff and had locations across the country).

b. The Agreement is valid and binding on the Plaintiff.

"Arbitration is available only when the parties involved contractually agree to arbitrate." *Towles,* 338 S.C. at 37. (citing *General Drivers, Warehousemen and Helpers Local Union No. 509 v. Ehtyl Corp*., 68 F. 3d 80, 83 (4th Cir. 1997). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Id*. (*O'Neil v. Hilton Head Hosp.,* 115 F. 3d 272, 273 (4th Cir. 1997). Specifically, South Carolina's Supreme Court has held that "the federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate

arbitration agreements. The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements." *Zabinski*, 346 S.C. at 596-97, 533 S.E.2d at 118 (citing *Allied-Bruce Terminix Cos., Inc.*, 513 U.S. at 268, 115 S. Ct. at 836 (1995)).

Here, Plaintiff electronically signed and dated the Agreement. This Court finds that the fact that Plaintiff signed it electronically rather than with a physical signature has no bearing on the enforceability of the Agreement and, as such, finds that Plaintiff's electronic signature constitutes valid acceptance of the Agreement. *See Smalls v. Credit Acceptance Corp.*, 2017 U.S. Dist. LEXIS 226336, *9 (D.S.C 2017) citing *Grant-Fletcher v. Collecto, Inc.*, 2014 U.S. Dist. LEXIS 64163 (D. Md. May 9, 2014) (enforcing arbitration agreement bearing plaintiff's electronic signature despite her denial of singing or having access to agreement)); *Dimery v. Convergys Corp.*, 2018 U.S. Dist. LEXIS 50555, n. 2 (D.S.C. 2018) ("Courts have previously held that an electronic signature of acknowledgment of the receipt of an employee handbook containing an arbitration provision constitutes valid acceptance of an [arbitration] agreement.") (citing *Jackson v. University of Phoenix, Inc.*, No. 5:13-cv-736-BO, 2014 U.S. Dist. LEXIS 21175 (E.D.N.C. 2014)).

Accordingly, as Plaintiff's electronic signature constitutes a valid acceptance of the agreement, this Court finds that the Agreement is valid and binding on the Plaintiff and Alorica.

c. The Arbitration Agreement Covers Plaintiff's claims in this Case.

Determining whether a party agreed to arbitrate a particular dispute is an issue for judicial determination to be decided as a matter of contract. *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir. 1998). An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute. *Zandford v. Prudential-Bache Sec., Inc.*, 112 F. 3d 723 727 (4th Cir. 1997). Importantly, "we must address questions of arbitrability with a healthy regard for the federal policy favoring arbitration."

Gilmer v. Interstate/Johnson Lane Corp. 500 U.S. 20, 26, 114 L. Ed. 26, 111 S. Ct. 1647 (1991), *citied* in *Johnson*, 148 F. 3d at 377. Therefore, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *O'Neil*, 115 F.3d at 273-4 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-5, 74 L. Ed. 2d 765, 103 S. Ct. 927 (1983)); *see also Johnson*, 148 F. 3d at 377. "Motions to compel arbitration should not be denied unless arbitration clause is not susceptible of any interpretation that would cover the asserted dispute." *Zandford*, 112 F. 3d at 727.

As alleged in the Complaint, Plaintiff brought causes of action against Alorica for (1) Violation of the South Carolina Payment of Wages Act; (2) Wrongful and Retaliatory Discharge; and, (3) Violation of South Carolina Human Affairs Law. Each of Plaintiff's causes of action solely arise out of Plaintiff's employment with Alorica. Accordingly, I find and conclude that because each cause of action alleged against Alorica arises explicitly out of Plaintiff's employment with Alorica, arbitration is proper under the terms of the Agreement.

CONCLUSION

This Court finds and concludes that the Plaintiff entered into a valid and binding Arbitration Agreement with Alorica and that the claims arising out of Plaintiff's Complaint are covered under the Arbitration Agreement. Therefore, it is **ORDERED, ADJUDGED AND DECREED** that the Plaintiff's claims against Alorica be dismissed and compelled to arbitration pursuant to the Federal Arbitration Act 9 U.S.C. § 1 et seq.

Plaintiff's claims against Defendants Greenville County and the Greenville County Sheriff's Office will remain before the Court.

IT IS SO ORDERED.

Signature Page of Judge Gravely to follow

Greenville Common Pleas

Case Caption: Meghan Gaffney vs. Greenville County Sheriffs Office , defendant, et al

Case Number: 2020CP2300906

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755