UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RICHARD HOSE, on his own behalf, and on behalf of all other similarly situated, Plaintiff, v. WASHINGTON INVENTORY SERVICES, INC., d/b/a WIS INTERNATIONAL, a California corporation, Defendant.	CASE NO. 14cv2869-WQH-WVG ORDER

HAYES, Judge:

The matter before the Court is Defendant's Motion to Compel Arbitration and to Dismiss this Action Pursuant to F.R.C.P. 12(b)(6), or, in the Alternative, to Stay the Proceedings. (ECF No. 57).

I. Procedural Background

On December 4, 2014, Plaintiff Richard Hose commenced this action by filing the Collective Action Complaint pursuant to the Fair Labor Standards Act ("FLSA") on behalf of himself and others similarly situated. (ECF No. 1). This action arises from Plaintiff's former employment as an Inventory Associate for Defendant Washington Inventory Services, Inc. ("WIS"), who employs "thousands" of people as "auditors, inventory associates, and/or other functionally equivalent hourly positions (collectively 'Auditors')" to travel to retail stores and count the inventory in those stores. (ECF No. 82 at 2).

On January 29, 2015, Plaintiff filed a notice of Consent to Join Suit as Party

Plaintiff. (ECF No. 4). On May 29, 2015, Plaintiff filed the First Amended Complaint. (ECF No. 26).

On December 4, 2015, Defendant filed the Motion to Compel Arbitration and to Dismiss this Action Pursuant to F.R.C.P. 12(b)(6), or, in the Alternative, to Stay the Proceedings ("Motion to Compel Arbitration"). (ECF No. 57). On February 1, 2016, Plaintiff filed a response in opposition. (ECF No. 72). On February 8, 2016, Defendant filed a reply. (ECF No. 75).

On March 14, 2016, Plaintiff filed a Second Amended Complaint ("SAC"), which is the operative complaint. (ECF No. 82). The Complaint asserts three claims for FLSA violations: (1) failure to pay minimum wages; (2) failure to pay overtime wages; and (3) failure to compensate for all hours worked. The Complaint also asserts three common law claims: (1) breach of contract; (2) breach of convenant of good faith and fair dealing; and (3) unjust enrichment. The Complaint requests an order certifying that the Complaint be maintained as a collective action pursuant to 29 U.S.C. § 216(b), an order equitably tolling the statute of limitations for the potential members of "the Collective," compensatory and statutory damages, liquidated damages, restitution, pre- and post-judgment interest, attorneys' fees, and costs. *Id.* at 27-28.

On March 30, 2016, the Court granted Plaintiff leave to submit a surreply to address new evidence in Defendant's reply filed in support of the Motion to Compel Arbitration. (ECF No. 85). On April 13, 2016, Plaintiff filed a surreply. (ECF No. 87).

On May 5, 2016, the Court held an evidentiary hearing on the Motion to Compel Arbitration. (ECF No. 88). On May 5, 2016, Defendant filed a supplemental declaration in support of its Motion to Compel Arbitration. (ECF No. 89). On June 21, 2016, the Court held an evidentiary hearing. (ECF No. 102). On July 5, 2016, the parties filed supplemental briefings. (ECF Nos. 106, 107). On July 12, 2016, the parties filed responses to the supplemental briefings (ECF Nos. 108, 109).

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II. Contentions of the Parties

Defendant WIS contends that thirteen former employees[1] ("Opt-ins") who filed opt-in consent forms in this action previously entered into a Dispute Resolution Agreement ("DRA") in which they agreed to "individually arbitrate all claim against Defendants . . . ." (ECF No. 57-1 at 4). Defendant contends that "each Opt-in agreed via electronic acknowledgment that they would submit any claims 'regardless of the date of accrual arising out of or related to the employment relationship, trade secrets, unfair competition, compensation, breaks and rest periods, termination . . . and state statutes, if any, addressing the same or similar subject matters, and all other state statutory and common law claims' to arbitration." *Id*. at 7 (quoting the DRA). Defendant contends that "except to the extent that any Opt-in challenges the Class Action Waiver, pursuant to WIS' and the Opt-ins' agreement to arbitrate gateway issues, this Court must leave all other issues for arbitration." *Id*. at 14. In support of its Motion, Defendant submits the declaration of Gabe Mazzarolo, the Vice President of Information Technology for WIS, and the DRAs allegedly signed by the Opt-ins.

Plaintiff contends that the Defendant's motion should be denied because "there is insufficient evidence that the employees actually reviewed or signed the 'Dispute Resolution Agreement'. . . ." (ECF No. 72 at 6). Plaintiff contends that the "'Signature ID' is not an actual signature (electronic or otherwise), but an alpha-numeric code that could have been generated from anywhere." *Id*. Plaintiff contends that Mazzarolo "admitted in deposition that he did not himself access or print either the page containing the template Agreement or the separate page containing the Signature ID." *Id*. Plaintiff attaches affidavits from seven of the thirteen Opt-ins[2] that state that they have no

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[1] WIS contends that the following individuals signed the Dispute Resolution Agreement: Karen Snellgrove, Paul O'Dell, Leslie Jackson, Harold Newton, Meka Smith, Claudia R. Vickers, Calvin White, Steven A. Hunnell, Candice Taylor, Katrina Bohanon, Bernice French, Deon Miller, and James C. Smith.

[2] Calvin White (ECF No. 72-7); James Smith (ECF No. 72-8); Karen Snellgrove (ECF No. 72-9); Paul O'Dell (ECF No. 72-10); Meka Smith (ECF No. 72-11); Candice Taylor (ECF No. 72-12); and Timothy Payton (ECF No. 72-13).

recollection of ever having been presented with an arbitration agreement or agreeing to arbitration. (ECF Nos. 72-7, 72-8, 72-9, 72-10, 72-11, 72-12, 72-13).

In a surreply, Plaintiff contends,

> To demonstrate the existence of "agreements" to arbitrate . . . WIS must prove that: (1) its security procedures are effective enough to ensure that the signature IDs could have been placed on the documents by the alleged signatory only, and no one else; (2) the alleged signatories intended to make a binding legal commitment to arbitrate their claims by performing the electronic "act" in question; and (3) WIS's systems, policies, and procedures ensure a secure chain of custody showing that the documents purportedly bearing the electronic "signatures" are the same ones originally generated by the electronic process (i.e. that they have not been altered or combined with other documents since their creation).

(ECF No. 87 at 4). Plaintiff contends that Defendant's evidence is deficient because Defendant has not showed that "the 'signature' appearing on the pages resulted from the 'act of' the alleged signatory." *Id*. at 5. Plaintiff contends that there is a "critical gap" between "evidence of the defendant's unique password and login system designed for generating electronic signatures on one hand, and the conclusion that the electronic signature was 'the act of' the alleged signatory, on the other." *Id*. at 5. Plaintiff notes that several of the exhibits attached to Vaughn's declaration (ECF No. 75-5 at 23, 25, 27), purporting to be signed arbitration agreements, are different from those submitted with Mazzarolo's declaration (ECF No. 57-3 at 42, 45, 48). *Id*. at 9. Specifically, the "signature ID pages for the same individuals" have "*different* dates, times, and signature ID numbers, and even *different* fonts, styles, typefaces, and logos." *Id*.

III. Factual Background

In his declaration, Mazzarolo, the Vice President of Information Technology for WIS, states:

> 4. As the Vice President of Information Technology I have access to WIS' electronic data bases, including access to electronic acknowledgments of WIS' Dispute Resolution Agreement ("DRA"). I am familiar with WIS' method for distributing the DRA to its employees through an internal WIS network site, and I have knowledge of how WIS' databases maintain acknowledgment records of employees who electronically signed the DRA.
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> 5. WIS current procedure for presenting, collecting, and storing information related to an employee's DRA in its internal network site has been the same since November 11, 2013.

> 6. Since November 11, 2013, WIS' DRA has been presented to employees via WIS' internal network site during the on-boarding process. All WIS employees who had completed their onboarding process prior to November 11, 2013 were also required to review and accept or opt-out of the DRA using WIS' network site on or after that date. A true and correct copy of the DRA presented to each employee is hereto as Exhibit 1.
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> 7. WIS' internal network site may only be accessed by WIS personnel using a distinct log-in and password . . . .
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> 8. To prevent anyone other than the employee themself accessing his or her records through the WIS network, each employee is provided with a user name and a temporary password to access the network for the first time. On the employee's first login to the WIS network, the employee is forced to change their password. In order to do so, the employee is required to enter his or her temporary password and then immediately change the password to one only known to him or herself. Passwords stored in the WIS environment are stored in an encrypted format and cannot be seen in plain text. When a request is made to reset a password the same process occurs as when the password was first elected—a temporary password is assigned, which must be changed upon login. A password must be unique, and the same password cannot be used repeatedly. Therefore, each employee's network log-in information is unique and can only be used by him or her.
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> . . . .
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> 10. When an employee is presented with the DRA, he or she is asked to review the document and to then enter his or her WIS network password to act as an electronic signature. Upon successful password verification (based on the password entry being matched to the store value for the employee's WIS Network account), the Websites shows the following Globally Unique Identifier . . . message reading: "Thank you for signing the Arbitration Agreement. The below information will act as your eSignature and have the same legal impact as signing a printed version of this agreement." The employee is also shown the time and date stamp of when she or he executed the agreement, a "Print Agreement" link, and a link back to the full WIS website
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> 11. Upon an employee's electronic execution of the DRA, the WIS system creates a PDF of the Dispute Resolution Agreement that shows the employee's electronic signature.

(ECF No. 57-3 at 2-3). Attached to Mazzarolo's declaration are copies of the DRAs allegedly signed by the Opt-ins printed on two pages. The first page is a print out of the company's template "DISPUTE RESOLUTION AGREEMENT" and the second page has the employee's typed name, date, time, and a "Signature ID." (ECF No. 57-3, Exhibits 4-16).

Defendant submits a supplemental declaration of Mazzarolo. (ECF No. 75-2).

Mazzarolo states,

> 4. For the last couple of years of my employment at WIS, during an employee login to a WIS network during the onboarding process, he or she was presented with the Dispute Resolution Agreement ("DRA") and could affix his or her signature thereto in the manner I previously detailed. This was accomplished through the onboarding system. For other WIS employees, including most WIS employees who worked for WIS prior to the use of the DRA, the DRA was presented to them the first time they logged into the WIS intranet after the DRA was rolled out. At that time they were asked to read it, affix their signature by using their unique user password and given the opportunity to print the DRA. . . Some employees hired after November of 2013 also reviewed and electronically signed the DRA by logging in to the WIS Intranet. If the DRA indicates "powered by Taleo" that means it was signed as part of the on-boarding process.
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> 5. When an employee electronically signs a DRA, WIS's system creates a PDF for the DRA showing the electronic signature. When I worked at WIS, WIS' internal network generated the PDF of an employee's electronically-signed DRA, that PDF was instantly transmitted via a secure internet connection to Ultipro, WIS' platform for storing and accessing personnel records.
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> 6. Ultipro is a secure platform to which only certain WIS personnel have access, on a need-to-know basis, in accordance with WIS' confidentiality policies. Designated personnel ("HR Personnel") can only access Ultipro by logging in using their own unique username and password. When HR Personnel are first granted access to Ultipro , each is provided a temporary username and password for log in, and cannot access any information without first changing their password to one known only to him or herself. Passwords are stored in Ultipro in an encrypted format and are never able to be seen in plain text. When HR Personnel request to reset their password, they are required to complete the same process. A password must be unique and the same password cannot be used repeatedly. Forced password changes were required for all users of the Ultipro system on a regular basis.

Id. at 2-3. Defendant submits the declaration of Brenda Vaughn, the Director of Employment Practices, which is part of WIS's Human Resources Department. (ECF No. 75-5). Vaughn states that she "personally logged in to WIS's secure serve to search for any Dispute Resolution Agreement ('DRA') that was electronically signed by each of the" Opt-Ins. (ECF No. 75-5 at 2). Attached to Vaughn's declaration, as Exhibit 1, "is a true and correct copy of the PDF of the DRAs that [she] found on WIS's secure

server, in folder for Arbitration Agreement . . . [she] personally printed out all documents that are part of Exhibit 1." *Id*. In a supplemental declaration, Vaughn states that, on May 4, 2016, she found additional DRAs signed by Deon Miller, Katrina Bohanon, and Bernice French that were completed during their onboarding process. (ECF No. 89). Vaughn states "these three individuals actually signed the DRA twice, once as part of the on-boarding process and a second time after they logged on to the WIS Intranet, which they could only access by using their own unique user name and password." *Id*. at 2. Vaughn states, "I do not know why [those Opt-ins] were asked to sign [the DRA] twice." *Id*.

On June 21, 2016, the Court held an evidentiary hearing. At the hearing, Defendant presented two witnesses, Ted Smykla, WIS' Director of Information Technology, and Brenda Vaughn, Director of Employment Practices. Smykla testified that as the Director of Information Technology, he oversaw the development and implementation of a web-based system used to present the arbitration agreement to employees on the company's intranet site. (ECF No. 105 at 6:2-7). Smykla testified that the web-based version of the DRA started being presented to employees in November of 2013. *Id*. at 5:17-21.

Smykla testified that the DRA was presented to WIS employees the first time they logged on to the WIS intranet using their individual log-on ID and secure password. *Id*. at 7:8-15. Smykla testified that if an employee did not correctly enter their unique login ID and password corresponding to their name, they would not be able to access their files on WIS' intranet. *Id*. at 9:20-23. Smykla testified that employees were required to change their passwords every 90 days. *Id*. at 18:13-16. Smykla testified that the first time employees logged in to the system and the DRA appeared, employees could bypass the DRA without signing it. *Id*. at 7:16-18. Smykla testified that the second time an employee logged on to the intranet, employees could not bypass the DRA and, unless they signed the DRA, "they could not access the system to check their schedule or any payroll validation." *Id*. at 7:22-23. The DRA stated, "If you

report to work after you receive this Agreement, you have accepted the terms of this Agreement. However, you have 14 days after you receive this Agreement to opt out of this Agreement . . . ." *See e.g.*, ECF No. 57-3 at 20 ¶ 3. Smykla testified that an employee could only sign the DRA by inputting his or her unique password in a space on the DRA labeled "enter your WIS web password to sign." *Id*. at 10:19-11:4. Smykla testified that there was no time limit for how long the employees could look at the DRA before they signed the document. *Id*. at 8:18-21. Smykla testified that the date on the bottom of the DRA reflects the date that the employees signed the DRA with their electronic signatures. *Id*. at 15:13-17. Smykla testified that employees could print out their signed DRA. *Id*. at 11:23-12:7.

Smykla testified that once the DRA was signed it was stored in a secure server in an off-site facility in Toronto, Canada. *Id*. at 16:6-9. Smykla testified that anybody that would try to access the secured database would have to have a valid log-on and password. *Id*. at 20:10-15. Smykla testified that only a "selective group of people in HR" had access to the data. *Id*. at 20:16-18. Smykla testified that he personally accessed the DRA data on that server to validate the date that the DRAs were signed by the Opt-ins. *Id*. at 16:15-17:13. Smykla testified that the signed DRAs and underlying data were saved in Adobe PDF format that could not be modified. *Id*. 16:10-14. Explaining why the signature was on a second page and not on the DRAs themselves, Smykla testified that the signed DRAs were printed on standard 8.5 x 11" paper and that the signatures would have appeared on the same page had the DRAs been printed on 11 x 14" paper. *Id*. at 37:17-22. Smykla testified that through December 2014, the web-based version of the DRA was presented to each new WIS employee the first time they logged on to the WIS intranet and that after that date the DRA was implemented as part of the on-boarding solution in UltiPro. *Id*. at 13:4-14:4.

Vaughn testified that she oversees the onboarding of new employees. *Id*. at 38:15-16. Vaughn testified that prior to using UltiPro for the on-boarding process for new employees, WIS used Taleo. *Id*. at 38:11-24. Vaughn testified that WIS still has

access to the Taleo data and that it is stored on a static database. *Id*. at 38:25-29:5. Vaughn testified that in order to access the data on the Taleo server, she receives a "system generated e-mail with a link to the software and a second one with a . . . temporary password." *Id*. at 39:11-16. Vaughn testified that she accessed the Opt-ins DRAs by logging onto the Taleo static database with her username and password, and searching for the employees' names. *Id*. at 44:21-24. Vaughn testified that she was "assured . . . that it is a static database and that the documents in it cannot be altered." *Id*. at 72:1-2. Vaughn testified that the DRAs she accessed were in a PDF format. *Id*. at 45:2. Vaughn testified that she personally accessed and printed the DRAs by entering her username and password. *Id.* at 51:19-52:1.

IV. Validity of the Arbitration Agreement

A party seeking to compel arbitration under the Federal Arbitration Act ("FAA") must prove, by a preponderance of the evidence: (1) the existence of a valid written agreement to arbitrate in a contract; and (2) that the agreement to arbitrate encompasses the dispute at issue. *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008). "In California,[3] a clear agreement to arbitrate may be either express or implied in fact." *Davis v. Nordstrom, Inc*., 755 F.3d 1089, 1093 (9th Cir. 2014) (internal quotation marks omitted).

An electronic signature has the same legal effect as a handwritten signature if it is authenticated. *Ruiz v. Moss Bros. Auto Grp*., 181 Cal. Rptr. 3d 781, 787 (Ct. App. 2014); Cal. Civ. Code § 1633.1. "Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is . . . ." Cal. Enid. Code § 1400. Civil Code section 1633.9 addresses the authentication of an electronic signature,

[3] Defendant does not concede that all DRAs for its employees nationwide are subject to analysis under California law. For purposes of this motion, the Court assumes that California law applies because this Court sits in diversity, as well as federal question jurisdiction. *See Fields v. Legacy Health Sys.*, 413 F.3d 943, 950 (9th Cir. 2005) (reasoning that federal courts sitting in diversity must look to the law of the forum state to determine controlling substantive law).

> An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

Id. at 787-88.

In *Ruiz*, the Court denied a motion to compel arbitration because there was insufficient evidence to support a finding that an electronic signature on an arbitration agreement was an "act attributable" to the employee. 181 Cal. Rptr. 3d at 785. In that case, the employee's name, a date, and a time appeared on signature and date lines, but the company's declaration "did not explain how she ascertained that the electronic signature . . . was 'the act of'" the employee. *Id.* The court noted,

> Indeed, [the declarant] did not explain that an electronic signature in the name of 'Ernesto Zamora Ruiz' could only have been placed on the 2011 agreement (i.e., on the employee acknowledgment form) by a person using Ruiz's 'unique login ID and password'; that the date and time printed next to the electronic signature indicated the date and time the electronic signature was made; that all Moss Bros. employees were required to use their unique login ID and password when they logged into the HR system and signed electronic forms and agreements; and the electronic signature on the 2011 agreement was, therefore, apparently made by Ruiz on September 21, 2011, at 11:47 a.m.

Id.

To authenticate electronic business records, a proponent must show that there were no breaks in the electronic chain of custody that could have altered the record from its original state. *In re Vee Vinhnee*, 336 B.R. 437, 444 (B.A.P. 9th Cir. 2005) ("The primary authenticity issue in the context of business records is on what has, or may have, happened to the record in the interval between when it was placed in the files and the time of trial. In other words, the record being proffered must be shown to continue to be an accurate representation of the record that originally was created.").

In this case, the Court finds Defendant's witnesses and the declarations credible and persuasive evidence that the electronic signatures on the DRAs were an act attributable to the Opt-ins. Smykla testified in detail regarding the security of the intranet system. Smykla testified that the Opt-ins accessed the DRA by logging in to WIS' intranet with a unique username and password. Smykla testified that the

employees had the option to bypass signing the DRA once, but after that the employees were unable to access their schedule and payroll unless they signed the DRA. Smykla testified that an employee could only sign the DRA by inputting his or her unique password in a space on the DRA labeled "enter your WIS web password to sign." Smykla testified that the DRAs were stored on a secure database and that the signed DRAs were stored in a PDF format that could not be modified. The witnesses' testified that WIS controlled access to the database in which the DRAs were stored, that only certain people had access to that database, and that those people had to log in with their unique username and passwords to access the database.

Based on the evidence in the record, the Court finds that the electronic signatures of the Opt-ins were placed on the DRA by the Opt-ins using unique logins and passwords. The Court finds that the employees were required to sign the DRA in order to access their schedules and payroll.[4] The Court finds that the date and time printed next to the electronic signatures indicate the date and time the DRA was signed. The Court finds that the evidence shows that the DRAs were stored on a secure database in a format that could not be modified. None of the Opt-ins deny electronically signing the DRA; rather, they claim that "they do not recall" being presented with or signing the DRA. (ECF Nos. 72-7, 72-8, 72-9, 72-10, 72-11, 72-12, 72-13). The Court finds that there is evidence in the record that the Opt-ins signed the DRAs.

The Court finds Defendant has properly authenticated the DRAs. The Court concludes that Defendant has proved, by a preponderance of the evidence, that the DRA is valid and was signed by the following Plaintiffs: Karen Snellgrove, Paul O'Dell, Leslie Jackson, Harold Newton, Meka Smith, Claudia R. Vickers, Calvin White, Steven

[4] Plaintiffs contends that Defendant has not proved that the Opt-ins intended to sign the DRA and assented to arbitration by his or her own affirmative act. The Court finds that the DRA is clear that acceptance of its term is a condition and term of employment at WIS absent the submission of a timely opt-out form. *See e.g.* ECF No. 57-3, ¶ 3. ("If you report to work after you receive this Agreement, you have accepted the terms of this Agreement. However, you have 14 days after you receive this Agreement to opt out of this Agreement . . . ."). The Court concludes that by signing the DRA, not opting out of it, and continuing to work, the Opt-ins accepted the DRA terms.

A. Hunnell, Candice Taylor, Katrina Bohanon, Bernice French, Deon Miller, and James C. Smith.

V. Exemption to the FAA

I. Judicial Notice

Defendant asks that the Court take judicial notice of a PDF of the United States Census Bureau website defining North American Industry Classification System Code 561990, filed in conjunction with the Declaration of Thomas Manning. (ECF No. 75-6 at 2). Plaintiff does not object to the request for judicial notice.

"As a general rule, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). However, Federal Rule of Evidence 201 provides that "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it ... is generally known within the trial court's territorial jurisdiction; or ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed R. Enid. 201(b). [U]nder Fed. R. Enid. 201, a court may take judicial notice of 'matters of public record.'" *Lee*, 250 F.3d at 689 (quoting *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986)). In this case, the Court will take judicial notice of the PDF however, the Court will not consider the truth of the facts therein.

ii. Discussion

Plaintiff contends that WIS' motion must be denied because Inventory Associate workers are exempt from the Federal Arbitration Act (FAA) as transportation employees engaged in interstate commerce. (ECF No. 72 at 8).

Defendant contends that Inventory Associates are not transportation workers because they are primarily engaged in "inventory counting services," not interstate commerce. (ECF No. 75 at 14). Defendant contends that WIS is classified by the United States Census Bureau as a "support services" employer, which is a separate category from the "transportation" or "retail trade" industries. *Id*. at 16.

Section 1 of the FAA excludes from the Act's coverage "contracts of

employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Supreme Court has held that his exemption is limited to the contracts of employment of "transportation workers." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 109, 119 (2001).

In their declarations, the Opt-ins state that "[a]s an Inventory Specialist, my duties consisted of loading and unloading equipment on the company vehicle, traveling to and from inventories, setting up equipment prior to inventory count and packing it at the end of the day, training new employees on using the scanner machines, tagging for inventory count, and counting inventory." (ECF No. 72-7 ¶ 5); *see e.g.*, ECF Nos. 72-8 ¶ 5; 72-9 ¶ 5, 72-10 ¶ 5, 72-11¶ 5, 72-12 ¶ 5, 72-13 ¶ 5. The declarations do not assert that the Opt-in Plaintiffs were engaged in "foreign or interstate commerce." While the Opt-in Plaintiffs may have crossed state-lines to work, there is no indication from the Declarations or the Complaint that the Opt-in Plaintiffs participated in the transport of goods for sale or delivering packages. *See Harden v. Roadway Package Sys., Inc.*, 249 F.3d 1137, 1140 (9th Cir. 2001) ("As a delivery driver for RPS, Harden contracted to deliver packages 'throughout the United States, with connecting international service.' Thus, he engaged in interstate commerce that is exempt from the FAA.").

VI. Conclusion

The Court concludes that the Opt-ins signed the DRA, that the DRA encompasses the dispute at issue, and that no exemption applies.

IT IS HEREBY ORDERED that Defendant's Motion to Compel Arbitration (ECF No. 57) is granted as to the following Opt-ins: Karen Snellgrove, Paul O'Dell, Leslie Jackson, Harold Newton, Meka Smith, Claudia R. Vickers, Calvin White, Steven A. Hunnell, Candice Taylor, Katrina Bohanon, Bernice French, Deon Miller, and James C. Smith. Pursuant to 9 U.S.C. section 4, the parties are directed to proceed to arbitration in accordance with the terms of the DRA. Pursuant to 9 U.S.C. section 3, the claims of the following Opt-ins are STAYED in favor of arbitration: Karen

Snellgrove, Paul O'Dell, Leslie Jackson, Harold Newton, Meka Smith, Claudia R. Vickers, Calvin White, Steven A. Hunnell, Candice Taylor, Katrina Bohanon, Bernice French, Deon Miller, and James C. Smith.

DATED: August 30, 2016

WILLIAM Q. HAYES
United States District Judge