

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-20660-CIV-LENARD

GLEND A OL AZ ABAL,

Plaintiff,

v.

**SERVICE KEEPERS
MAINTENANCE, INC.,
and PAMELA SKALET,**

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
COMPLAINT, COMPEL ARBITRATION AND STAY DISCOVERY PENDING
DETERMINATION OF THE MOTION (D.E. 13), COMPELLING
ARBITRATION, DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE,
AND CLOSING CASE**

THIS CAUSE is before the Court on Defendants Service Keepers Maintenance, Inc. and Pamela Skalet's Motion to Dismiss Plaintiff's Complaint, Compel Arbitration, and Stay Discovery Pending Determination of the Motion, ("Motion," D.E. 13), filed March 21, 2017. Plaintiff Glenda Olazabal filed a Response on March 27, 2017, ("Response," D.E. 17), to which Defendants did not Reply. Upon review of the Motion, Response, and the record, the Court finds as follows.

Plaintiff brought this lawsuit under the Fair Labor Standards Act ("FLSA") to recover unpaid overtime wages from her employer, Service Keepers Maintenance Inc., and its owner, Pamela Skalet. (Compl., D.E. 1.) Defendants argue in their Motion that Plaintiff signed a Binding Arbitration Agreement (hereafter, "Agreement") in connection

with her employment that provides, in relevant part, that any claim, dispute, or controversy “arising from, related to, or having any relationship or connection whatsoever” with her employment with Service Keepers “shall be submitted to and determined exclusively by binding arbitration.” (Mot. ¶¶ 2-3.) Defendants attached to their Motion a copy of the Agreement signed by Plaintiff. (D.E. 13-1.)

In her one-page Response, Plaintiff appears to concede that she signed the Agreement, but she “does not admit that Defendants are the intended beneficiaries of the alleged arbitration agreement.” (Resp. at 1.) Instead, she agrees “to submit the issue of whether a valid arbitration agreement exists to a mutually agreeable arbitrator” (Id.)

Although Plaintiff believes that the validity of the arbitration agreement should be decided by an arbitrator, that issue is directly before the Court on Defendants’ Motion. And Plaintiff has provided no argument or evidence that the Binding Arbitration Agreement she signed is invalid.

The Federal Arbitration Act (“FAA”) provides that pre-dispute arbitration agreements “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. “By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985) (emphasis in original) (citing 9 U.S.C. §§ 3, 4). Consequently, “[u]nder the FAA, . . . , a district court must grant a motion to compel arbitration if it is satisfied that the parties actually agreed to arbitrate the dispute.” John B. Goodmant Ltd. P’ship v.

THF Constr., Inc., 321 F.3d 1094, 1095 (11th Cir. 2003); see also Hemispherx Biopharma, Inc. v. Johannesburg Consol. Invs., 553 F.3d 1351, 1366 (11th Cir. 2008) (“The role of the courts is to ‘rigorously enforce agreements to arbitrate.’”) (quoting Dean Witter, 470 U.S. at 221).

“In reviewing a motion to compel arbitration, a district court must consider three factors: (1) whether a valid written agreement to arbitrate exists, (2) whether an arbitrable issue exists, and (3) whether the right to arbitrate was waived.” Integrated Sec. Servs. v. Skidata, Inc., 609 F. Supp. 2d 1323, 1324 (S.D. Fla. 2009).

Here, Defendants argue that Plaintiff signed a Binding Arbitration Agreement that covers the claims she raised in the Complaint, and attached a signed copy of the Agreement to their Motion. (D.E. 13, 13-1.) The Agreement provides, in relevant part:

I also acknowledge that the Company utilizes a system of alternative dispute resolution which involves binding arbitration to resolve all disputes which may arise out of the employment context. Because of the mutual benefits (such as reduced expense and increased efficiency) which private binding arbitration can provide both the Company and myself, I and the Company both agree that any claim, dispute, and/or controversy that either party may have against one another (including . . . applicable state or federal laws or regulations) which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company (or its owners, . . .) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the Company, . . . shall be submitted to and determined exclusively by binding arbitration.

(Id. at 1-2.) The Agreement also contains a collective action waiver. (Id.) The Agreement is on Service Keepers Maintenance, Inc.’s letterhead and indicates that it is between “Service Keepers Maintenance, Inc.” and an employee, and is signed by “Glenda Olazabal” on September 10, 2014. (D.E. 13-1.)


The court finds that: (1) a valid, written agreement to arbitrate exists, (id.); (2) Plaintiff's unpaid overtime wage claims under the FLSA are arbitrable issues, see Walthour v. Chipio Windshield Repair, LLC, 745 F.3d 1326, 1335 (11th Cir. 2014) (affirming order compelling arbitration and dismissing complaint asserting unpaid overtime wage claims under the FLSA based upon a binding arbitration agreement which contained a collective action waiver); and (3) Defendants have not waived their right to compel arbitration. Indeed, Plaintiff does not argue otherwise. Therefore, arbitration must be compelled, and this action must be dismissed with prejudice. See Perera v. H & R Block E. Enters., Inc., 914 F. Supp. 2d 1284, 1290 (S.D. Fla. 2012) (compelling arbitration of unpaid overtime wage claims under the FLSA and dismissing complaint with prejudice).

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendants' Motion to Dismiss Plaintiff's Complaint, Compel Arbitration and Stay Discovery Pending Determination of the Motion is **GRANTED**;
2. Plaintiff is **COMPELLED** to submit her claims to arbitration;
3. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**;
4. All pending motions are **DENIED AS MOOT**; and

5. This case is now **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida this 5th day of April,
2017.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE