

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JACQUELINE LEA MARQUEZ, On	§	NO. 5:16-CV-1038-DAE
Behalf of Herself and All Others	§	
Similarly Situated, GREGORIO T.	§	
ROJO,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
THE FINISH LINE, INC.,	§	
	§	
Defendant.	§	
	§	

**ORDER REFERRING CASE TO ARBITRATION AND
DISMISSING CASE WITHOUT PREJUDICE**

The matter before the Court is Plaintiffs’ Motion to Refer to Arbitration. (Dkt. # 17.) Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration of the memorandum in support of the motion, the Court, for the reasons that follow, **GRANTS** Plaintiffs’ motion to refer the case to arbitration and **DISMISSES** the case.

LEGAL STANDARD

Under the Federal Arbitration Act (“FAA”), “[a] written provision in . . . a contract to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds

exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA “expresses a strong national policy favoring arbitration of disputes, and all doubts concerning the arbitrability of claims should be resolved in favor of arbitration.” Primerica Life Ins. Co. v. Brown, 304 F.3d 469, 471 (5th Cir. 2002).

The Fifth Circuit employs a two-step analysis to determine whether the parties have agreed to arbitrate a dispute. Sherer v. Green Tree Servicing LLC, 548 F.3d 379, 381 (5th Cir. 2008) (citations omitted). First, a court must ask if the parties agreed to arbitrate the dispute. Webb v. Instacorp., Inc., 89 F.3d 252, 258 (5th Cir. 1996). This determination requires consideration of whether a valid agreement to arbitrate exists among the parties and whether the dispute is within the scope of the arbitration agreement. Id. In making this determination, courts should generally apply “ordinary state-law principles that govern the formation of contracts,” but must give due regard to the federal policy favoring arbitration and resolve any ambiguities as to the scope of the arbitration clause itself in favor of arbitration. Id. Once a court determines that the parties agreed to arbitrate, the court must assess whether any legal restraints external to the agreement foreclose arbitration of the dispute. OPE Int’l L.P. v. Chet Morrison Contractors, Inc., 258 F.3d 443, 445–46 (5th Cir. 2001).

ANALYSIS

Plaintiffs request that the Court refer this case to arbitration based on the arbitration agreement recently produced by Defendant Finish Line, Inc. (“Finish Line”)—which Plaintiffs apparently did not know existed prior to initiating this lawsuit in this Court. (Dkt. # 17.) Plaintiffs have attached the arbitration agreement as evidence to their motion. (Dkt. # 17-1.) Finish Line did not file any response in opposition to this request.

Here, upon review, the Court finds that a valid agreement to arbitrate exists among the parties and that the dispute is within the scope of the arbitration agreement. The Court also finds that there are no legal restraints external to the agreement to arbitrate in this case. Accordingly, the Court concludes that this case should be referred to arbitration.

The FAA provides that when a court properly and mandatorily refers claims to arbitration it shall stay the case until arbitration is complete. However, “[t]he weight of authority clearly supports dismissal of the case [as opposed to staying the suit] when all of the issues raised in the district courts must be submitted to arbitration.” Rodgers-Glass, 2015 WL 4190598 at *8 (quoting Alford v. Dean Witter Reynolds, Inc., 975 F.2d 1161, 1164 (5th Cir. 1992)). In this case, all of Plaintiffs’ claims are subject to mandatory arbitration, and the Court therefore chooses dismissal as the appropriate procedure.

CONCLUSION

Based on the foregoing, the Court **GRANTS** Plaintiffs' Motion to Refer to Arbitration (Dkt. # 17), and **DISMISSES** the case **WITHOUT PREJUDICE** so Plaintiffs may pursue the case in arbitration in accordance with the terms of the arbitration agreement.

IT IS SO ORDERED.

DATED: San Antonio, Texas, November 27, 2017.

A handwritten signature in black ink, appearing to read "David Alan Ezra", is written over a horizontal line.

David Alan Ezra
Senior United States District Judge