IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EHI AIMIUWU, Plaintiff, v. AT&T SERVICES, INC., Defendant.	CIVIL ACTION FILE NO. 1:17-cv-3952-CAP-JKL

FINAL REPORT AND RECOMMENDATION

This is an employment discrimination case in which Plaintiff Ehi Aimiuwu alleges that his former employer, Defendant AT&T Services, Inc., discriminated against him on the basis of national origin (Nigerian) and retaliated against him for complaining about the alleged discrimination, all in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"). The case is before the Court on Defendant's Motion to Compel Arbitration and Stay All Proceedings. [Doc. 6.] For the reasons that follow, I **RECOMMEND** that Defendant's motion be **GRANTED**.

I. BACKGROUND

In June 2014, Defendant hired Plaintiff as a Senior Manager eCommerce in Defendant's Digital Experience Department in Atlanta, Georgia. (Compl. [Doc. 1] ¶ 16, 68.) According to the Declaration of Angela Christian, who works in Defendant's Human Resources Department, Defendant has used an electronic personnel system known as "CareerPath" since 2012 to manage its "application and pre-onboarding processes" for job candidates and new hires. (Decl. of Angela Christian [Doc. 6-2] ¶¶ 2, 4.) When a candidate begins the process of applying for employment, the candidate is required to use CareerPath to complete application documents electronically via the internet. (*Id.* ¶ 5.) To apply for a position, the candidate creates an account, which he or she uses to access and complete the application documents. (*Id.*)

If Defendant extends an offer of employment to the candidate, he or she must review and complete additional documents using CareerPath as part of the "pre-onboarding process." (Christian Decl. ¶ 6.) Since at least June 2012, all applicants for Defendant's management positions have received a document entitled "Management Arbitration Agreement," or "MAA," as part of the pre-onboarding process. CareerPath is programmed to require review and completion of the MAA

as a mandatory part of the pre-onboarding process; it will not update a candidate's status to "Hire-Hired," and Defendant's payroll system will not begin issuing paychecks to that individual, unless and until the candidate has reviewed and completed the MAA. To complete the MAA, the candidate must review the document's terms and electronically sign his or her name to the form by entering the e-mail address used to create the CareerPath account. (*Id.*)

CareerPath creates records of a candidate's application and pre-onboarding activities, including preserving the data entered by the candidate at the time the candidate completes his or her application and, if the candidate receives and accepts an offer, each pre-onboarding activity. (Christian Decl. ¶ 7.) Defendant maintains this application and pre-onboarding data, and the information can be published to master PDF documents that correspond to the forms that the candidate viewed at the time he or she completed the each application and pre-onboarding action. (*Id.*)

The application records for Plaintiff indicate that he electronically signed his application on April 2, 2014, at 12:00:03 a.m., and that the computer he used to electronically sign the application had the IP address 99.88.177.34. (Christian Decl. ¶ 8, Ex. 1.) The records also indicate Defendant made an offer of employment to Plaintiff that was approved on May 20, 2014. (*Id.* ¶ 9, Ex. 2.) At

the time Plaintiff applied for and accepted employment, CareerPath archived a replica of the MAA form that pre-onboarding candidates electronically signed (the "Master MAA Form"). (*Id.* ¶ 10.)

Ms. Christian accessed the data corresponding to the Master MAA Form that Plaintiff completed as part of his pre-onboarding process, and she published the data to the Master MAA Form by printing to PDF. (Christian Decl. ¶ 10.) The data that she printed to PDF is attached as Exhibit 3 to her declaration. (*Id.* ¶ 10, Ex. 3.) According to the document, Plaintiff electronically signed and submitted the MAA on June 2, 2014, at 3:33:13 p.m. using a computer with the IP address 99.88.177.34, which is the same IP address from which his application was electronically signed. (*Id.* ¶¶ 8, 10.)

The MAA provides, in pertinent part, as follows:

> This Agreement is governed by the Federal Arbitration Act, 9 U.S.C. § 1 and following, and evidences a transaction involving commerce. This agreement applies to any claim that you may have against any of the following: (1) any AT&T company, (2) its present or former officers, directors, employees or agents in their capacity as such or otherwise, (3) the Company's parent, subsidiary and affiliated entities, and all successors and assigns of any of them; and this agreement also applies to any claim that the Company or any other AT&T company may have against you. Unless stated otherwise in this Agreement, covered claims include without

> limitation those arising out of or related to your employment or termination of employment with the Company and any other disputes regarding the employment relationship, trade secrets, unfair competition, compensation, breaks and rest periods, termination, defamation, retaliation, discrimination or harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Genetic Information Non-Discrimination Act, and state statutes and local laws, if any, addressing the same or similar subject matters, and all other state and local statutory and common law claims. This Agreement survives after the employment relationship terminates. Nothing contained in this Agreement shall be construed to prevent or excuse you from utilizing the Company's or employee benefit plans' existing internal procedures for resolution of complaints.
>
> Except as it otherwise provides, this Agreement is intended to apply to the resolution of disputes that otherwise would be resolved in a court. This Agreement requires all such disputes to be resolved only by an arbitrator through final and binding arbitration and not by way of a court or jury trial. Such disputes include without limitation disputes arising out of or relating to interpretation or application of this Agreement, but not as to the enforceability, revocability or validity of the Agreement or any portion of the Agreement, which shall be determined only by a court of competent jurisdiction.

[Doc. 6-2 at 12.]

On October 6, 2017, Plaintiff filed a two-count complaint against Defendant, alleging that Defendant discriminated and retaliated against him in violation of

Title VII. [Doc. 1.] On November 7, 2017, James R. Glenister, an in-house lawyer for Defendant, wrote to Plaintiff's counsel, advising that Plaintiff's claims were subject to mandatory arbitration under the MAA. (Decl. of James R. Glenister [Doc. 6-3] ¶ 3, Ex. 1.) Mr. Glenister attached to his email a PDF copy of the MAA that Plaintiff had purportedly signed when he was hired. (*Id.*)

On February 2, 2018, Defendant moved to compel arbitration and stay the proceedings in this case because Plaintiff's Title VII discrimination and retaliation claims are subject to binding arbitration under the MAA. [Doc. 6.] Plaintiff opposes the motion on the grounds that an issue of fact exists as to whether the MAA is a valid contract because metadata for the electronic copy of the MAA sent to his counsel by Mr. Glenister indicates that the document was created during the investigation of Plaintiff's claims by the Equal Employment Opportunity Commission ("EEOC") in 2017, and not when Plaintiff executed it in 2014. [Doc. 12.[1]] Defendant has filed a reply. [Doc. 13.]

[1] Plaintiff's opposition brief is not paginated; thus, the Court refers to the page numbers automatically generated by CM/ECF when citing to specific pages within that document.

II. DISCUSSION

The Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"), was enacted "to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991) (citations omitted). Section 2 of the FAA, in particular, has been recognized as "a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Section 2 provides that a "written [arbitration] provision in any . . . contract evidencing a transaction involving commerce . . . 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.

Further, Section 3 of the FAA, provides:

> [i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the

> agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3. The Supreme Court has stated that once a party "ha[s] made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Gilmer*, 500 U.S. at 26.

Accordingly, "to determine whether to compel arbitration, a court must assess whether: (1) there is a valid written agreement to arbitrate; (2) the issue sought to be arbitrated is arbitrable under the agreement; and (3) the party asserting the claims has failed or refused to arbitrate the claims." *Gunning v. Springleaf Fin. Servs., Inc.*, No. 1:12-CV-03830-CC, 2013 WL 12109466, at *2 (N.D. Ga. Aug. 5, 2013) (citing *Lomax v. Woodmen of the World Life Ins. Soc'y*, 228 F. Supp. 2d 1360, 1362 (N.D. Ga. 2002)); *see also Lambert v. Austin Indus.*, 544 F.3d 1192, 1195 (11th Cir. 2008) (FAA requires a court to either "stay or dismiss a lawsuit and to compel arbitration upon a showing that (a) the plaintiff entered into a written arbitration agreement that is enforceable 'under ordinary state-law' contract principles and (b) the claims before the court fall within the scope of that arbitration agreement") (citing 9 U.S.C. §§ 2-4). While there is a strong presumption in favor of arbitration under federal law and the FAA, *see* 9 U.S.C. § 2, the presumption

does not apply to disputes concerning whether an agreement to arbitrate has been made," *Dasher v. RBC Bank (USA)*, 745 F.3d 1111, 1116 (11th Cir. 2014) (citation omitted); *see also Christian v. Robinson-Humphrey Co.*, 957 F.2d 851, 854 (11th Cir. 1992) ("[P]arties cannot be forced to submit to arbitration if they have not agreed to do so.") (citing *Volt Info. Sci., Inc. v. Bd. of Trs.*, 489 U.S. 468, 478 (1989) and *Goldberg v. Bear, Stearns & Co.*, 912 F.2d 1418, 1419 (11th Cir. 1990) (per curiam)).

Thus, before directing the parties to arbitrate, the Court "must first determine whether 'the making of the agreement for arbitration or the failure to comply therewith is . . . in issue.'" *Burch v. P.J. Cheese, Inc.*, 861 F.3d 1338, 1346 (11th Cir. 2017) (quoting 9 U.S.C. § 4). To raise a genuine issue about the existence of an arbitration agreement, then, the party seeking to avoid arbitration must: (1) unequivocally deny that an agreement to arbitrate was reached, and (2) offer "some evidence" to substantiate that denial. *T & R Enters., Inc. v. Cont'l Grain Co.*, 613 F.2d 1272, 1278 (5th Cir. 1980).[2] "If, under a summary judgment-like standard, the district court concludes that there is no genuine dispute as to any material fact

[2] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

concerning the formation of such an agreement, it may conclude as a matter of law that the parties did or did not enter into an arbitration agreement." *Burch*, 861 F.3d at 1346 (citation, quotation marks, and alteration omitted). But if the court finds that there is a genuine issue of disputed fact over the making of the agreement, the court shall conduct a trial to establish the existence of an arbitration agreement. *Id.* "A dispute is not 'genuine' if it is unsupported by the evidence or is created by evidence that is 'merely colorable' or 'not significantly probative.'" *Bazemore v. Jefferson Capital Sys., LLC*, 827 F.3d 1325, 1333 (11th Cir. 2016) (quoting *Baloco v. Drummond Co.*, 767 F.3d 1229, 1246 (11th Cir. 2014)) (internal quotation marks omitted). Likewise, "conclusory allegations without specific supporting facts have no probative value for a party resisting summary judgment." *Id*. (citation and internal quotation marks omitted).

Here, the parties only dispute whether an arbitration agreement exists—an issue governed by state law. *See Bazemore*, 827 F.3d at 1329 ("[T]his Circuit repeatedly has emphasized that state law generally governs whether an enforceable contract or agreement to arbitrate exists.") (citation and quotation marks omitted); *see also Douglas v. Johnson Real Estate Inv'rs, LLC*, 470 F. App'x 823, 823 (11th Cir. 2012) (same); *cf. Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1367-

68 (11th Cir. 2005) (strong federal policy favoring arbitration is also taken into consideration even in the application of state law, and FAA is pre-emptive of state laws hostile to arbitration). The parties agree that Georgia law controls. [*See* Doc. 6-1 at 7-8 (arguing that MAA is valid under Georgia law); Doc. 12 at 8 (arguing that MAA is invalid under Georgia law).] The Eleventh Circuit has succinctly summarized the Georgia law concerning the validity of a contract as follows:

> In Georgia, to constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate. The element of assent requires (a) a meeting of the minds (b) on the essential terms of the contract. The existence and terms of a contract must be proven by a preponderance of the evidence. The party asserting the existence of a contract has the burden of proving its existence and its terms.

Bazemore, 827 F.3d at 1330 (citations and quotation marks omitted).

In its motion and attachments, Defendant has come forward with ample evidence to satisfy its burden that the parties entered into an arbitration agreement that covers the Title VII retaliation and discrimination claims in this action. First, there is no dispute that both parties were competent to enter into an arbitration agreement. Second, the MAA is supported by consideration because the MAA requires both parties to resolve disputes through binding arbitration, and the MAA

also provides that Defendant will pay for arbitration costs (beyond the initial filing fee otherwise required to initiate a lawsuit in court). [Doc. 6-2 at 12.] *See Jackson v. Cintas Corp.*, 425 F.3d 1313, 1318 (11th Cir. 2005) ("Under Georgia law, a mutual exchange of promises constitutes adequate consideration."); *see also Caley*, 428 F.3d at 1376 ("Here, the plaintiffs received reciprocal promises from [the company] to arbitrate and be bound by arbitration [and the MAA] provides that [the company] will pay the arbitration and mediation costs. These promises constitute bargained-for consideration."); *Attenborough v. Dillard's Dep't Store*, No. 1:06-CV-0291-TWT, 2006 WL 1663299, at *2 (N.D. Ga. June 9, 2006) (holding that arbitration agreement was supported by consideration "as it required both the Plaintiff and the Defendant to submit all discrimination and retaliation disputes related to the Plaintiff's employment to 'final and binding arbitration'").

Third, Defendant has presented evidence—chiefly through the declaration of Ms. Christian—that Plaintiff electronically signed the version of the MAA attached to Ms. Christian's declaration in connection with his hiring in June 2014. As discussed more specifically above, Ms. Christian describes in detail how candidates, such as Plaintiff, use CareerPath to apply for positions and then, once an offer of employment has been extended, to review and electronically sign

documents, including the MAA at issue in this case. Ms. Christian explains how CareerPath's records indicate that Plaintiff in particular signed the MAA in this case using his unique CareerPath credentials; that CareerPath preserved replica data of the MAA that Plaintiff signed; and that an employee hired for Plaintiff's position employee could not even start work or receive a paycheck until the MAA was signed. (*See* Christian Decl. ¶¶ 5-9, Exs. 1-3.) She also explains how she was able to generate a PDF copy of the MAA that Plaintiff signed, which was then attached to her declaration. (*Id.* at ¶ 10.)

Having presented evidence that Plaintiff signed the MAA, the burden shifts to Plaintiff to come forward with competent evidence demonstrating a genuine issue of fact. *Burch*, 861 F.3d at 1346; *T & R Enters.*, 613 F.2d at 1278. Plaintiff's argument in this regard focuses almost entirely on the authenticity of the PDF version of the MAA that Mr. Glenister, in-house counsel for Defendant, emailed to Plaintiff's counsel in November 2017. [Doc. 12 at 1-2.] In particular, Plaintiff maintains that metadata from the MAA PDF file emailed in November shows that the PDF was created in 2017 during the pendency of Plaintiff's EEOC investigation, and that that fact alone creates a material issue of whether the MAA PDFs that Defendant provided to Plaintiff's counsel in November and the Court

along with its motion are legitimate. [*Id.* at 2, 4-7.] Plaintiff argues that that if the version of the MAA that his counsel received in November 2017 had, in fact, been downloaded from Defendant's "server" or "an online cloud system such as CareerPath," its metadata should (1) reflect the date the document was originally uploaded to the system; (2) show the date modified as the date the document was downloaded from the server or cloud, or later modified; (3) include information about the software used to generate the PDF; and (4) leave the author of the file blank, or otherwise include the generating software as the author. [Doc. 12 at 4-5.] Plaintiff also points out that the metadata indicates that the author of the PDF file his counsel received is an individual named Kirk Moser, but that Defendant has provided no testimony concerning Mr. Moser's role in the creation of the document. [*Id.* at 5-6.] According to Plaintiff, Mr. Moser should not be listed on the software if the document was generated by CareerPath software, and because he is listed, there is a question of "whether [Mr. Moser] typed in the alleged signature and IP address tracking info into the document personally." [*Id.* at 6.] Plaintiff goes on to argue that the metadata indicates that Mr. Moser created the document using a PDF conversion program on June 28, 2017, after the EEOC had initiated its investigation and just seven days before the EEOC issued its right-to-

sue notice. [*Id.*] Plaintiff maintains that the "significant time differential between the creation date and the alleged signature on the Document indicates that the Document was created from scratch well after Plaintiff's onboarding, potentially in anticipation of Plaintiff's upcoming lawsuit." [*Id.*] Plaintiff relatedly contends that the software used to create the PDF, "Acrobat PDFMaker 15 for Word," indicates (1) that the document was converted to PDF from Word, and (2) that because the software was first released in April 2015, nearly a year after Plaintiff is alleged to have signed the MAA, the Word document was also created well after Plaintiff was alleged to have signed it. [*Id.* at 6-7.]

Finally, Plaintiff argues that Defendant's records—showing that Plaintiff's IP address reflected on his employment application matches the IP address recorded on the copy of the MAA—do not demonstrate the authenticity of the copy of the MAA attached to Ms. Christian's declaration. [Doc. 12 at 7.] In particular, Plaintiff questions the authenticity of the application for employment itself and asserts that Defendant has not provided "independent proof" that the IP address was not actually added later to the MAA form by Moser, rather than auto-populated in CareerPath. [*Id.* at 7-8.] He further argues that the IP address on the employment application and MAA "indicates a geolocation in Marietta, Georgia," but that in

2014, when Plaintiff signed the MAA, he lived in "Kennesaw, Georgia, northeast of the sphere the listed IP address covers." [*Id.* at 8.]

Plaintiff's proffered "evidence" and arguments standing alone are insufficient to create a genuine dispute of fact that Plaintiff executed the arbitration agreement or that the version of the agreement attached to Ms. Christian's agreement reflects the terms of the MAA to which the parties agreed.

> The party opposing a motion to compel arbitration or to stay litigation pending arbitration has the affirmative duty of coming forward by way of affidavit or allegation of fact to show cause why the court should not compel arbitration, and this burden is not unlike that of a party seeking summary judgment; the party opposing arbitration should identify those portions of the pleadings, depositions, answers to interrogatories, and affidavits which support his contention.

Leslie v. Barclays Bank Del. No. 1:17-CV-02514-ELR-RGV, 2017 WL 8220505, at *4 (N.D. Ga. Oct. 13, 2017) (quotation marks and alterations omitted), *report and recommendation adopted*, 2018 WL 1320082 (N.D. Ga. Jan. 3, 2018). Plaintiff's contentions regarding the authenticity or "legitimacy" of the PDF document that counsel forwarded him in November 2017, and his unsubstantiated speculation and theories that Defendant could have manufactured the MAA document submitted to the Court to perpetuate some sort of fraud, is insufficient to meet this burden.

As a threshold matter, Plaintiff has not supported his argument with any competent evidence. He attaches what appears to be a screenshot of the file properties for the MAA PDF that his counsel received in November 2017; however, without any accompanying affidavit or declaration, that document has not been authenticated. [*See* Doc. 12-1.] Likewise, has he presented no sworn evidence to support his assertions about the meaning or significance of information reflected in that screenshot. More fundamentally, Plaintiff attacks only the MAA PDF form sent to his counsel in November 2017, and not the version introduced by way of Ms. Christian's declaration and attached to Defendant's motion.[3] Accordingly, Plaintiff has failed to come forward with competent evidence to contradict Defendant's evidence establishing the existence of an arbitration agreement, including evidence that Plaintiff signed it when he was hired. *See Gregorius v. Npc Int'l, Inc.*, No. 216CV593FTM99MRM, 2016 WL 6996116, at *4 (M.D. Fla. Nov. 30, 2016).

[3] As Plaintiff acknowledges, he cannot view, and therefore cannot attack, the MAA PDF attached to the motion, since the CM/ECF system "'wipes' a document's metadata." [Doc. 12 at 2, n.1.] Ms. Chastain provides foundation for the MAA form attached to her declaration and explains how she created it and why it is authentic, and Plaintiff offers no evidence to dispute the truth of her assertions or the authenticity of the MAA PDF form attached. (Chastain Decl. ¶ 10.)

But, even assuming that the copy of the MAA that Defendant provided Plaintiff's counsel in November 2017 was created in June 2017, no reasonable finder of fact could infer on this record that the Plaintiff did not electronically execute that version of the MAA as part of the hiring process. For starters, Defendant does not dispute that the PDF file was prepared in 2017. As Ms. Christian explains in her declaration, she generated a PDF from Defendant's computer system, which contains the data about who signed the MAA, what the MAA contained, and when the MAA was signed. Plaintiff offers no evidence suggesting that the copy of the MAA that Defendant generated does not accurately reflect the version of the MAA that he reviewed and signed. He merely insinuates that his name ***could*** have been forged, that IP address associated with his computer ***might*** not be accurate, or that the agreement itself ***may*** have been altered. Significantly, Plaintiff does not deny, under oath, that he did not sign the MAA, nor does he offer any evidence, testimonial or otherwise, that suggests the version of the agreement he signed differs in any way from the one attached to Ms. Christian's declaration. *See Burch*, 861 F.3d at 1346; *T & R Enters.*, 613 F.2d at 1278. Similarly, his arguments that at the time of his application, he did not live in a "geographic sphere" that corresponds to the IP address reflected on his

application and on the MAA is completely unsupported by any evidence whatsoever. He offers no testimony or evidence explaining how he geolocated the IP address or the accuracy of the "geographic sphere" identified; indeed, the Court notes that Marietta, Georgia and Kennesaw, Georgia are geographically close. His bald assertion that the computer used to apply and access CareerPath had been assigned an IP address different than the one reflected in his application is entirely without supporting documentation or testimony, and he fails to provide any rational basis to believe that the application and MAA PDF do not accurately reflect his computer's IP address. In fact, Plaintiff has not offered any evidence or argument identifying his alleged alternative IP address; rather, he merely conjectures that the IP address identified in the application and MAA forms may not be his. In sum, Plaintiff has come forward with no competent evidence or reasonable argument in response to Ms. Christian's declaration testimony and documentary evidence concerning the application and onboarding process and Plaintiff's execution of the MAA form.

Based on the foregoing, I readily conclude that there is no genuine issue of material fact concerning the formation of the arbitration agreement at issue in this case. After review record before me, I conclude that Defendant has carried its

burden to show that the parties entered into an arbitration agreement, a copy of which is attached as Exhibit 3 to Ms. Christian's declaration.

The remaining issues—whether the dispute at issue in this case fall within the MAA and whether the party asserting arbitration has failed or refused to arbitrate the claims—are not disputed. [*See* Docs. 6, 12.] Even so, I note that each of those issues favors granting Defendant's motion. The MAA explicitly covers claims brought under Title VII, [*see* Doc. 6-2 at 12], and the only claims that Plaintiff asserts in this lawsuit are disparate treatment and retaliation claims under Title VII [Doc. 1 ¶¶ 70-89]. Likewise, there is no indication that Defendant has failed or refused to arbitrate those claims. To the contrary, the record demonstrates that Defendant has attempted to arbitrate Plaintiff's claims from the inception of this lawsuit. (*See generally* Glenister Decl. (indicating that in-house counsel contacted Plaintiff's counsel concerning MAA even before Defendant had been served).) Accordingly, Defendant's motion should be granted.

III. CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Defendant's Motion to Compel Arbitration and Stay All Proceedings [Doc. 6] be **GRANTED**.

It is **FURTHER RECOMMENDED** that this case be **STAYED** pending arbitration and that the Clerk be **DIRECTED** to **ADMINISTRATIVELY CLOSE** this action pending the parties' arbitration.[4]

It is **FURTHER RECOMMENDED** that parties be **DIRECTED** to petition the Court to reopen this matter following arbitration, if required, or, alternatively, in the event the action is resolved prior to completion of said arbitration proceedings, the parties notify the Court as soon as practicable and dismiss the above-captioned case.

The Clerk is **DIRECTED** to terminate this reference.

IT IS SO RECOMMENDED this 9th day of April, 2018.

JOHN K. LARKINS III
United States Magistrate Judge

[4] Administrative closure of a case does not prejudice the rights of the parties, as the parties may move to reopen an administratively closed case at any time.