IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COURTNIE ARNOLD, individually and on Behalf of all others similarly situated, and JAMELYNN HALLEY,	)	
Plaintiffs,	)	**Case No. 16-CV-328-GKF-PJC**
v.	)	
GENGHIS GRILL, *et al.*,	)	
Defendants.	)	

ORDER

Before the court are the Motion to Compel Arbitration [Dkt. #51] and Motion to Stay Proceedings Pending Ruling on Defendants' Motion to Compel and Request for an Expedited Ruling [Dkt. #60], each filed by defendants. Plaintiff Courtnie Arnold ("Ms. Arnold") alleges defendants violated the Fair Labor Standards Act ("FLSA") by inadequately compensating her during her employment at two Genghis Grill-brand restaurants in Bixby and Tulsa, Oklahoma. Defendants argue Ms. Arnold entered into a Mutual Arbitration Agreement ("MAA"), which obligates her to arbitrate her claims against all defendants. Defendants also seek a stay pending completion of the arbitration of Ms. Arnold's claims. In response, Ms. Arnold argues she did not enter into the MAA.

The Federal Arbitration Act allows a "party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration" to petition a court "for an order directing that such arbitration proceed in the manner provided for in [the] agreement." 9 U.S.C. § 4. If the court is satisfied that the "making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall . . . order . . . the parties to proceed to arbitration."

Id. However, if "the making of the arbitration agreement or the failure, neglect, or refusal to [arbitrate] be in issue, the court shall proceed summarily to the trial thereof." *Id.*

The "summary trial" described in § 4 "can look a lot like summary judgment." *Howard v. Ferrellgas Partners, L.P.*, 748 F.3d 975, 978 (10th Cir. 2014). Accordingly, the court must determine whether "material disputes of fact exist . . . viewing the facts in the light most favorable to the party opposing arbitration." *Id.* Ms. Arnold argues there is a material dispute of fact as to whether she electronically signed the MAA.[1]

Defendants provided two declarations by Nancy Jacobi, Director of Human Resources for CMG Management Solutions, which provides human resources services to Chalak M&M OK1, LLC ("OK1") and Chalak M&M OK2 ("OK2"), the entities that operated the Tulsa and Bixby restaurants, respectively. [Dkt. #51-1, p. 1]. According to Ms. Jacobi, new employees use an "electronic onboarding portal" to access, review, and sign "contractual agreements" governing their employment. [*Id.* at 2]. Ms. Jacobi declared the "required documents are completed sequentially, one after another, until all documents have been completed." [Dkt. #59-1, p. 1]. Ms. Jacobi declared that OK2 issued Ms. Arnold unique log-in credentials and gave her access to the electronic portal. [Dkt. #51-1, p. 2]. Defendants submitted a copy of a set of onboarding documents signed through the portal by someone logged in under the user name "carnold" between 8:27 p.m. and 8:43 p.m. on June 11, 2015, all from the same IP address located in Bixby, Oklahoma. [*Id.* at 4-42]. The paperwork signed using Ms. Arnold's log-in called for personal information, including Ms. Arnold's social security number and Ms. Arnold's emergency contacts. [Dkt. #59-1, pp. 4, 32]. The MAA was in this set of paperwork. The MAA shows a confirmation

[1] The parties disagree as to whether the court should apply Oklahoma or Texas law when deciding whether the parties entered into the MAA. Because the only issue before the court is whether Ms. Arnold electronically signed the MAA, and both Oklahoma and Texas recognize electronic signatures—Okla. Stat. tit. 12A, § 15-107; Tex. Bus. & Com. Code § 322.007—the choice of law would not affect the court's analysis.

check next to each paragraph and an electronic signature by "Portal User [carnold]" at 8:32 p.m. on June 11, 2015. [*Id.* at 25-28].

Ms. Arnold declared she "did complete some electronic paperwork on a computer located at the Genghis Grill," but she does not recall seeing the MAA at the time. [Dkt. #57-1, p. 1]. Ms. Arnold declared the first time she recalls seeing the MAA was when her attorney showed it to her. [*Id.*]. Ms. Arnold declared she believes the electronic paperwork she filled out "was very basic and requested very basic information." [*Id.* at 2]. Ms. Arnold declared she would not agree to the terms of the MAA if presented to her. [*Id.*]. The essence of Ms. Arnold's argument is that since she does not remember signing the MAA, someone else must have electronically signed it on her behalf.

Ms. Arnold does not point to any evidence that someone else had access to her log-in credentials. Ms. Arnold submitted a copy of a declaration by Brandy Mitchell ("Ms. Mitchell") a former server and manager at a Genghis Grill restaurant in Little Rock, Arkansas. [Dkt. #58]. Ms. Mitchell made the declaration in connection with a separate action in the Eastern District of Arkansas. [*Id.* at 1]. Ms. Mitchell declared that two men, each "a district or general manager" told her to generate passwords for new employees "and complete the paperwork for those employees." [*Id.* at 3]. Ms. Mitchell declared she did "not think those employees are even aware of the paperwork that I was required to sign for them." [*Id.*]. The parties have not presented any evidence or argument as to whether the two managers Ms. Mitchell describes had any connection to or contact with the stores in which Ms. Arnold worked. Ms. Arnold admits she completed some electronic paperwork, and thus would have been issued her own log-in credentials, which is inconsistent with the practice described in Ms. Mitchell's declaration.

Ms. Arnold declared she only signs her full name—Courtnie Marie Arnold—"when a full signature is explicitly required," and thus she does not believe she signed the MAA, which contains a "By" line including Ms. Arnold's full name. [Dkt. #57-1, p. 2; Dkt. #59-1, p. 28]. However, below the "By" line there is a "Signature" line that includes only the initials "CA." [Dkt. #59-1, p. 28]. The Electronic Signature Agreement shows that Ms. Arnold's electronic signature was her initials, "CA." [Dkt. #59-1, p. 5]. Thus, Ms. Arnold's declaration that she only includes her middle name in her signature when the document expressly calls for it is not inconsistent with her signing the onboarding paperwork, including the MAA, which was signed using the initials "CA."

The court concludes Ms. Arnold has not raised a material dispute of fact as to whether she signed the arbitration agreement.

Ms. Arnold argues the court should postpone ruling on the Motion to Compel until after it has ruled on the Motion for Conditional Class Certification [Dkt. #55]. In support of this argument, Ms. Arnold cites several cases in which courts have conditionally certified a class for notice purposes even though the claims of some of the putative opt-in plaintiffs may have been subject to arbitration agreements. [Dkt. #56, pp. 14-20]. This argument is not persuasive, as the cases Ms. Arnold cites addressed the claims of putative opt-in class members, not named plaintiffs. "[T]he issue of whether the named plaintiffs must arbitrate their claims should be decided well before the . . . notification issue is reached." *Carter v. Countrywide Credit Indus., Inc.*, 189 F. Supp. 2d 606, 618 (N.D. Tex. 2002) (citing on *Newman v. Countrywide Home Loans, Inc.*, 2001 WL 1148943 (N.D. Tex. Sept. 20, 2001) (unreported)).

WHEREFORE, defendants' Motion to Compel Arbitration [Dkt. #51] is granted. Ms. Arnold and the defendants are hereby ordered to proceed to arbitration of Ms. Arnold's claims pursuant to the terms of the MAA. Ms. Arnold's claims in this case are stayed pending the

completion of arbitration, although her Motion for Leave to File First Amended Complaint [Dkt. #54]—in which she seeks leave to, *inter alia*, add Jamelynn Halley as a named plaintiff—is not stayed. Defendants' Motion to Stay Proceedings Pending Ruling on Defendants' Motion to Compel and Request for an Expedited Ruling [Dkt. #60] is moot.

IT IS SO ORDERED this 25th day of August, 2016.

GREGORY K. FRIZZELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT