UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-61918-CIV-DIMITROULEAS

MARIE AUGUSTIN, an individual,

Plaintiff,

v.

CUBESMART, L.P, a Delaware Corporation,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION DISMISS COMPLAINT, OR IN THE ALTERNATIVE, TO COMPEL ARBITRATION

THIS CAUSE is before the Court upon Defendant Cubesmart, L.P.'s ("Cubesmart" or "Defendant")'s Motion to Dismiss Complaint, or in the Alternative, to Compel Arbitration [DE 10], filed on September 21, 2018 (the "Motion"). The Court has carefully considered the Motion, Plaintiff Marie Augustin ("Plaintiff" or "Augustin")'s Response in Opposition [DE 13], Defendant's Reply [DE 16], and is otherwise advised in the premises. For the reasons stated herein, the Court will grant the Motion.

I. BACKGROUND

On August 16, 2018, Plaintiff commenced this action against Defendant for alleged sex/gender and pregnancy discrimination as well as retaliation in violation of Title VII of the Civil Rights Act, 42 U.S.C. §2000 *et seq.*, and for violations of the Family and Medical Leave Act (FMLA), 29 U.S.C. §2601 *et seq.* [DE 1]. Plaintiff alleges that Defendant violated Title VII and the FMLA by terminating her employment with Defendant based on a proffered false reason

four days after Plaintiff notified Defendant of her intent to take FMLA-maternity leave in connection with the birth of her child. *See id.*

Defendant now moves to enforce the U-Solve-It Alternative Dispute Resolution Arbitration Agreement (the "Arbitration Agreement") that Plaintiff electronically completed upon her hiring in January of 2015, and to therefore dismiss this action or alternatively to compel arbitration. *See* [DE 10; 10-1; 10-2].

The Arbitration Agreement states, in pertinent part:

> This Agreement waives the parties rights to obtain any legal or equitable relief (e.g., monetary, injunctive or reinstatement) through any court, and they also waive their right to commence any court action to the extent that is permissible under law provided that either party may seek equitable relief to preserve the status quo pending final disposition under U-Solve-It. The parties may seek and be awarded any remedy through U-Solve-It that they could receive in a court of law.
>
> The parties agree to follow the multi-step process outlined in U-Solve-It, which culminates in the use of arbitration. In such an event, the claim shall be arbitrated by one arbitrator in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") as amended by U-STORE-IT's U-Solve-It program. The arbitrator's decision shall be final and binding. The arbitrator shall have the power to award any types of legal or equitable relief that would be available under applicable law.

See [DE 10-1] at p. 1.

In response, Plaintiff does not contest that the Federal Arbitration Agreement applies to the Arbitration Agreement and that Plaintiff's claims in this case would be arbitrable pursuant to the Arbitration Agreement. *See* [DE 16]. Instead, Plaintiff contends that Defendant has failed to meet its burden to establish that Plaintiff read, signed, or agreed to the Arbitration Agreement. *See id.*

II. LEGAL STANDARD

The Federal Arbitration Act ("FAA") places arbitration agreements on equal footing with all other contracts and reflects a "liberal federal policy favoring arbitration." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012) (internal quotations & citations omitted). Section 2 of the FAA provides that written arbitration agreements in a contract "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. "Consistent with the FAA's text, courts must rigorously enforce arbitration agreements according to their terms." *Walthour v. Chipio Windshield Repair, LLC*, 745 F.3d 1326, 1329–30 (11th Cir. 2014) (internal quotations & citations omitted). Section 4 of the FAA allows "a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration" to request the court to order arbitration "in the manner provided for in such agreement." 9 U.S.C. § 4. Section 3 mandates that when a court concludes an issue is "referable to arbitration under an agreement in writing for such arbitration" the court "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." 9 U.S.C. § 3.

The determination of whether a dispute is arbitrable under the Federal Arbitration Act ("FAA") consists of two prongs: "(1) whether the parties agreed to arbitrate the dispute," and (2) "whether 'legal constraints external to the parties' agreement foreclosed arbitration.'" *Klay v. All Defendants*, 389 F.3d 1191, 1200 (11th Cir. 2004) (citation omitted). The second step concerns whether "Congress has clearly expressed an intention to preclude arbitration of [a] statutory claim." *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1273 (11th Cir. 2002).

An arbitration agreement governed by the FAA, like the Arbitration Agreement here, is presumed to be valid and enforceable. *See Palidino v. Avnet Computer Technologies, Inc.*, 134

F.3d 1054, 1057 (11th Cir. 1998) ("The FAA creates a presumption in favor of arbitrability"). Furthermore, the party resisting arbitration bears the burden of showing that the Arbitration Agreement is invalid or does not encompass the claims at issue. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000). The Court considers a motion to compel under a summary judgment-like standard and may decide the motion as a matter of law where there is no genuine dispute of fact. *Bazemore v. Jefferson Capital Sys., LLC*, 827 F.3d 1325, 1333 (11th Cir. 2016) A dispute is not "genuine" if it is unsupported by the evidence; "conclusory allegations without specific supporting facts have no probative value." *Id.*

III. DISCUSSION

Defendant moves to dismiss this case with prejudice or alternatively to compel Plaintiff to arbitrate her claims pursuant to the Arbitration Agreement. Defendant's Motion is supported by exhibits, specifically: a copy of an agreement titled "U-Solve-It Alternative Dispute Resolution Arbitration Agreement" [DE 10-1]; and the electronic transcript log for Marie Augustin showing that on January 3, 2015 at 10:28:00 AM, Augustin electronically completed a task named "Receipt and Acknowledgement of U-Solve-It Alternative Dispute Resolution" [DE 10-2].

In response, Plaintiff does not dispute that she electronically received the Arbitration Agreement or that she electronically completed the Arbitration Agreement on January 3, 2015. *See* [DE 16]. Plaintiff has submitted no record evidence or affidavit to contradict the record evidence submitted by Defendant. Therefore, applying the required summary judgment-like standard required in assessing a motion to compel arbitration, *see Basemore*, 827 F.3d at 1333, there is no genuine dispute of fact. The undisputed evidence in the record demonstrates that the Arbitration Agreement is valid and that Plaintiff agreed to arbitrate her claims against Defendant

pursuant to the Arbitration Agreement.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Dismiss Complaint, or in the Alternative, to Compel Arbitration [DE 10] is **GRANTED**.
2. This case is **DISMISSED WITH PREJUDICE.** If Plaintiff wishes to pursue her claims pled herein against Defendant, she must proceed to final, binding arbitration pursuant to the terms of the Arbitration Agreement.
3. The Clerk is directed to **CLOSE** this case and **DENY** any pending motions as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 14th day of November, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
All counsel of record