UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES SCHUSTER,

Plaintiff,

v. **Case No: 8:18-cv-2389-T-35JSS**

UBER TECHNOLOGIES, INC.,

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Defendant Uber Technologies, Inc.'s Motion to Compel Arbitration and Stay All Court Proceedings, (Dkt. 10), and the response in opposition thereto. (Dkt. 21) Upon consideration of all relevant filings, case law and being otherwise fully advised, the Court **GRANTS** Defendant's Motion.

Defendant contends that the claims alleged in Plaintiff's complaint for violations of the Telephone Consumer Protection Act ("TCPA"), invasion of privacy, and intentional infliction of emotional distress are covered by an arbitration agreement. (Dkt. 10) Defendant contends that, upon registering for an Uber account, Plaintiff agreed to binding arbitration of these claims when he accepted Uber's Terms and Conditions, which contain an arbitration clause ("Arbitration Agreement"). (Dkt. 10 at 6) Defendant further asserts that the Arbitration Agreement contains a delegation provision that delegates the determination of arbitrability to the arbitrator. (Id. at 10–12) Plaintiff does not dispute that he agreed to Uber's Terms and Conditions, nor does Plaintiff maintain that the Arbitration

Agreement therein is invalid; rather, Plaintiff contends that claims brought in the instant action are not within the scope of the Arbitration Agreement. (Dkt. 21)

As a threshold matter, "parties may agree to arbitrate gateway questions of arbitrability including the enforceability, scope, applicability, and interpretation of the arbitration agreement." Jones v. Waffle House, Inc., 866 F.3d 1257, 1264 (11th Cir. 2017) (citing Rent-a-Center, W., Inc. v. Jackson, 560 U.S. 63, 68–69 (2010). "Indeed, an agreement to arbitrate these gateway issues 'is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other.'" Id. (quoting Rent-a-Center, W., Inc., 560 US at 70). Such an antecedent agreement is referred to as a "delegation provision." Id. "When an arbitration agreement contains a delegation provision— committing to the arbitrator the threshold determination of whether the agreement to arbitrate is enforceable—the courts only retain jurisdiction to review a challenge of that specific provision." Id. (quoting Parnell v. CashCall, Inc., 804 F.3d 1142, 1144 (11th Cir. 2015)). However, a delegation provision must manifest the parties' clear and unmistakable intent to arbitrate gateway issues. Id. at 1267. To make this determination, courts look to the language of the delegation provision itself. Id.

Defendant points to the language of the Arbitration Agreement, which states,

> You agree that any dispute, claim or controversy arising out of or relating to these Terms **or the breach, termination, enforcement, interpretation or validity thereof** or the use of the Services (collectively, "*Disputes*") will be settled by binding arbitration between you and Uber . . . .

(Dkt. 11-1 at 10 (emphasis added)). Addressing the issue of whether Plaintiff's claims are properly within the scope of the Arbitration Agreement necessarily involves resolving a dispute regarding the interpretation and enforcement of the Arbitration Agreement.

Similar delegation provision language has been upheld by the Eleventh Circuit as clearly and unmistakably evincing the Parties' intent to arbitrate the gateway issue of arbitrability. See Jones, 866 F.3d at 1267 (finding clear intent to arbitrate arbitrability when delegation provision states, "The Arbitrator, and not any federal, state, or local court or agency, shall have authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement"); Parnell, 804 F.3d at 1148 (finding clear intent to arbitrate arbitrability when delegation provision "commits all 'Disputes' to arbitration and expressly states that a Dispute includes '*any issue concerning the validity, enforceability, or scope of this loan or the Arbitration agreement.*'").

Plaintiff contends that "Uber's arguments that arbitrability should be decided by an arbitrator are . . . misguided" because "Uber in essence admits that its own arbitration clause contains no provision expressly delegating arbitrability to the arbitrator . . . ." (Dkt. 21 at 6) This is incorrect. Defendant states: "Here, the Arbitration Provision clearly and unmistakably provides that it covers ***'[a]ny dispute, claim or controversy arising out of or relating to [the Agreement] or the breach, termination, enforcement, interpretation or validity thereof . . . .'*** Therefore, any question as to the validity, enforcement and interpretation of the Arbitration Agreement, which is in included in the Agreement, and whether it applies to this dispute, has been delegated to, and must be decided by, the arbitrator in the first instance." (Dkt. 10 at 10 (internal citations omitted) (emphasis in original)). Thus, as Plaintiff does not dispute the validity of the Arbitration Agreement itself and the Agreement contains a delegation provision that clearly and unmistakably delegates the gateway issue of arbitrability to the arbitrator, the Court lacks jurisdiction to determine the arbitrability of Plaintiff's claims.

Moreover, even if the above delegation provision did not provide the requisite intent, the Arbitration Agreement contains another provision evincing intent to arbitrate arbitrability. This additional provision states that "arbitration will be administered by the American Arbitration Association ('*AAA*') in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the '*AAA Rules*')." (Dkt. 11-1 at 11) The Eleventh Circuit has held that when parties incorporate the AAA Rules, which empower arbitrators to decide issues of arbitrability, into their arbitration agreements, they have "clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid." Terminex Int'l Co., v. Palmer Ranch Ltd. P'shp, 432 F.3d 1327, 1332 (11th Cir. 2005).

Pursuant to Eleventh Circuit binding precedent, recently confirmed by the Supreme Court, once a court finds that the parties have agreed that the question of arbitrability is for the arbitrator, no further inquiry is necessary. See Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524, 531 (2019); Jones, 866 F.3d 1257, 1271 (11th Cir. 2017) ("In the face of the parties' agreement to arbitrate gateway issues concerning the interpretation, applicability, enforceability, and formation of the arbitration agreement at issue, the district court was not free to pass judgment on the wisdom or efficacy of the provision in the first instance and should have compelled arbitration."). Accordingly, the Court need not resolve the inquiry of whether Plaintiff's claims are subject to the arbitration agreement. As such, Defendant's request for leave to file a reply to address Plaintiff's reliance on Gamble v. New England Auto Fin., Inc., 735 F. App'x 664, 665 (11th Cir. 2018), to support its argument regarding whether Plaintiff's claims fall within the scope of the arbitration clause is **DENIED AS MOOT**.

Plaintiff's response contains an embedded request for limited arbitration-related discovery to determine whether Defendant or a third party sent the text messages at issue in this case. (Dkt. 21 at 7–8) In support, Plaintiff cites to Thompson v. AT&T Services Inc. et al., a case in which the United States District Court for the Northern District of Illinois denied a motion to compel arbitration without prejudice and granted arbitration-related discovery. No. 17 C 3607, 2018 WL 4567714, at *6 (N.D. Ill. Sept. 24, 2018). In Thompson, there was a dispute about whether the defendant was a signatory to the arbitration clause found in AT&T U-verse's terms of service. Id. The court could not determine from the record whether the defendant was an agent of AT&T entitled to invoke the arbitration clause; thus, further discovery was necessary to determine whether the defendant could properly compel arbitration. Id. at *7–*8. Unlike Thompson, in the instant case, there is no dispute that Defendant, Uber Technologies, Inc., is a signatory to the Terms and Agreement and can properly invoke the Arbitration Agreement. Moreover, the asserted basis for the limited discovery in this case concerns the merits of Plaintiff's claim, a matter to be determined in arbitration. Accordingly, no discovery is needed to determine that the Parties in this action have agreed to arbitrate the arbitrability of Plaintiff's claims.

Accordingly, the Motion to Compel Arbitration is due to be granted. The arbitrator is to decide whether the claims raised in the Complaint are arbitrable under the Parties' Arbitration Agreement. Should the arbitrator decide that they are not, Plaintiff may return to this Court to pursue his claims.

Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

1. Defendant's Motion to Compel Arbitration, (Dkt. 10), is **GRANTED**.

2. The Parties are **ORDERED** to arbitrate pursuant to the Arbitration Agreement.
3. This proceeding is **STAYED** pending arbitration. The Clerk is directed to **TERMINATE** all motions pending before the Court and **ADMINISTRATIVELY CLOSE** this case.
4. The Parties shall have **fourteen (14) days** after the completion of arbitration to file a notice or appropriate motion advising the Court how and whether this case should proceed.

DONE and ORDERED in Tampa, Florida this 7th day of February, 2019.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Party