UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ADRIENNE LIGGINS, Plaintiff, v. GMRI, INC. et al., Defendants.	CV 18-09000-DSF (AFMx) Order GRANTING Defendants' Motion to Compel Arbitration and Stay Proceeding Pending Arbitration (Dkt. 12)

I. INTRODUCTION

Plaintiff Adrienne Liggins brings this putative class action against GMRI, Inc. (GMRI), Olive Garden Holdings LLC (OGH), and Darden Restaurants, Inc. (Darden) (together, Defendants). Dkt. 1-1, Ex. A (Compl.). Defendants move to (1) strike Plaintiff's class action allegations; (2) dismiss Plaintiff's first through tenth claims for relief and require her to raise them on an individual basis through arbitration; and (3) stay Plaintiff's eleventh claim for penalties under the Private Attorneys General Act (PAGA). In the alternative, Defendants move to (1) strike Plaintiff's class action allegations; (2) order Plaintiff to prosecute her first through tenth claims for relief through individual arbitration only; and (3) stay all civil proceedings pending completion of individual

arbitration. Id. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below, the motion to compel arbitration and to stay all civil proceedings pending arbitration is GRANTED.

II. FACTUAL BACKGROUND

GMRI, d/b/a Olive Garden Restaurant, is a wholly owned subsidiary of Darden. Dkt. 12-5, Melissa Ingalsbe Decl. ¶ 3. GMRI is the sole member of OGH. Id. GMRI employed Plaintiff from approximately January 2016 to May 2016 as a server at one of GMRI's Olive Garden restaurants located in Manhattan Beach, California. Id. ¶ 6; Dkt. 13-5, Adrienne Liggins Decl. ¶ 4.[1] In April 2017, Plaintiff reapplied as a server at an Olive Garden Restaurant in Huntington Beach, California. Liggins Decl. ¶ 7. GMRI employed Plaintiff for a second time from approximately April 2017 to mid-2017. Id.

On being rehired, Plaintiff was provided a Dispute Resolution Policy Booklet containing a summary of GMRI's policies for resolving work-related disputes with its employees (DRP Booklet). Ingalsbe Decl. ¶¶ 7, 8. The DRP Booklet provides four steps in the resolution of an employment-related dispute, culminating with arbitration of any legal claims. Id., Ex. 1 (DRP Booklet). The DRP Booklet also provides that the Employment Dispute Resolution Rules of the American Arbitration Association (AAA Rules) shall govern any arbitration proceeding and that an "arbitrator has the sole authority to determine whether a dispute is arbitrable and whether it has been timely filed and pursued." Id. at 7, 8. It also requires employees to raise disputes only through individual arbitration. Id. at 3. Employees expressly

[1] The parties dispute the precise dates of Plaintiff's employment. The exact dates are not pertinent to the Court's decision.

waive their right to raise concerted actions (Concerted Action Waivers). Id. The DRP Booklet requires that a court, rather than an arbitrator, decide whether the Concerted Action Waivers are valid and enforceable. Id. The DRP Booklet does not mention GMRI or OGH by name, and only refers to Darden, GMRI's and OGH's parent company,[2] on the second unnumbered page. Id. (Cover Page). The DRP Booklet states that it is an agreement "between the Employee and his/her employer ('the Company'), which is a direct or indirect subsidiary" of Darden. Id.

After presenting the DRP Booklet to Plaintiff, GMRI required Plaintiff to sign an Acknowledgement Form as a condition of her employment. Ingalsbe Decl. ¶ 8. The Acknowledgement Form stated that the signer had received, read, and agreed to the terms of the DRP Booklet. Id., Ex. 2 (Acknowledgement Form). Plaintiff signed the Acknowledgement Form on April 6, 2017. Id. Although Plaintiff does not specifically recall signing the Acknowledgement Form or receiving the DRP Booklet, she does not dispute that she signed the Acknowledgement Form. Liggins Decl. ¶ 6. Darden's Director of the Dispute Resolution Process and HR Compliance Department also signed the Acknowledgement Form. See Ingalsbe Decl. ¶ 1; Ex. 2 (Acknowledgement Form). [3]

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[2] Based on the evidence presented by Defendants which Plaintiff does not dispute, Darden operates as a parent company of GMRI and an indirect parent company of OGH. See Ingalsbe Decl. ¶ 3 ("GMRI is a wholly-owned subsidiary of Defendant Darden and the sole member of Defendant OGH.").

[3] The Court will refer to the DRP Booklet and the Acknowledgement Form together as the DRP.

III. DISCUSSION

A. Agreement to Arbitrate Arbitrability

The parties agree that the Federal Arbitration Act (FAA) governs here. "By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). The court's role under the FAA is limited to determining "two 'gateway' issues: (1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute." Brennan v. Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015) (quoting Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 84 (2002). Even these gateway issues can be submitted to an arbitrator where there is clear and unmistakable evidence that the parties intended that result. See id. (citing AT & T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 649 (1986)). In determining whether the parties intended to arbitrate these gateway issues, the Court must look to whether there is evidence that an agreement to arbitrate arbitrability was made at all and must disregard disputes over whether the agreement was valid, except as to standard contract defenses that apply specifically to the arbitrability clause, and not the contract as a whole. Rent-A-Center, West, Inc., v. Jackson, 561 U.S. 63, 70-72 (2010). Validity of the overall contract cannot be a defense to a valid agreement to arbitrate gateway issues because that is a defense to a gateway issue subject to arbitration. See id. at 72.[4]

[4] Plaintiff's contention that Darden does not have authority to contract in California is a question for the arbitrator. Dkt. 12-4, Carlos Jimenez Decl., Ex. 2 ¶ 6b (AAA Rules).

Defendants argue Plaintiff agreed to arbitrate the gateway issues based on two delegation provisions. First, the DRP provides that the "arbitrator has the sole authority to determine whether a dispute is arbitrable and whether it has been timely filed and pursued." DRP at 7. This alone is clear and unmistakable evidence of the parties' intent to arbitrate the scope of the arbitration agreement. Second, the DRP provides that the AAA Rules will govern any arbitration proceeding under the DRP. Id. at 8. The AAA rules state that the "arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the . . . validity of the arbitration agreement." Jimenez Decl., Ex. 2 ¶ 6a. "[I]ncorporation of the AAA rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability." Brennan, 796 F.3d at 1127-28. The Court finds there is clear and unmistakable evidence of an agreement to arbitrate arbitrability.

Plaintiff contends Darden is the only other contracting party to the DRP and therefore only Darden can enforce the terms of the DRP. Plaintiff is wrong on both counts. The DRP expressly states it is an agreement "between the Employee and his/her employer ("the Company"), which is a direct or indirect subsidiary" of Darden. DRP (Cover Page). Plaintiff alleges that the DRP is between her and Darden, but also alleges that all Defendants are joint employers. Compl. ¶ 15.

In any event, a nonsignatory litigant "may invoke arbitration under the FAA if the relevant state contract law allows the litigant to enforce the agreement." Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1128 (9th Cir. 2013) (citing Arthur Anderson LLP v. Carlisle, 556 U.S. 624 (2009)). Under California law, enforcement of an arbitration agreement by a nonsignatory is permitted where the nonsignatory is the agent for a party to the arbitration agreement or the nonsignatory is a third-party

beneficiary of the agreement. Jenks v. DLA Piper Rudnick Gray Cary US LLP, 243 Cal. App. 4th 1, 8 (2015).

To claim the benefits of a contract, "the third-party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third party." See Klamath Water Users Protective Ass'n v. Patterson, 204 F.3d 1206, 1211 (9th Cir. 2000)). The DRP provides that it governs "employment-related disputes," which reflects an express intent to regulate any disputes Plaintiff would have against her employer. Even if GMRI were not Plaintiff's employer and a direct contracting party, it is a subsidiary of Darden. The express language of the DRP reflects that its terms were intended to benefit Darden and its subsidiaries. GMRI may enforce the terms of the DRP as a third-party beneficiary.

That Plaintiff also alleges Defendants are agents of one another, Compl. ¶ 15, is sufficient to allow all defendants to enforce the terms of the DRP. Thomas v. Westlake, 204 Cal. App. 4th 605, 614-15 (2012) (allegations in complaint that defendants acted as agents of one another is sufficient to allow alleged agent/nonsignatory to compel arbitration).

The parties do not dispute that Darden is a party to the DRP. GMRI may enforce the terms of the DRP as a third-party beneficiary, and all Defendants may enforce the terms of the DRP because Plaintiff alleges they are agents of one another.

B. Concerted Action Waivers

The Concerted Action Waivers, which Plaintiff contends are void and unenforceable, are expressly excepted from the arbitrator's jurisdiction. DRP at 3(a)-(c).[5] The Concerted Action

[5] The parties agree the Court must decide the enforceability of the Concerted Action Waivers. Mot. at 15; Opp'n at 8.

Waivers require that claims be brought on an individual basis in arbitration rather than a concerted (class) basis. Id. The Supreme Court recently held such provisions do not invalidate an arbitration agreement and are enforceable. See Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1632 (2018) (reversing holding in Morris v. Ernst & Young LLP, 834 F.3d 975 (9th Cir. 2016) and upholding validity of class action waivers as condition of employment in arbitration agreements). The provisions are valid and enforceable here.

The DRP provides it "is always to be used and interpreted consistently with applicable law" and that arbitration is not applicable to disputes "that by controlling federal law cannot be subjected to mandatory arbitration." DRP at Cover Page, 2. The parties dispute whether "applicable law" and "controlling federal law" refer to the law at the time the DRP was executed (when Morris was the applicable controlling law) or the law at the time of enforcement (when Epic Sys. became the controlling law).

Finding both interpretations of the terms plausible and the meaning of the terms uncertain, the Court will apply the general rules of interpretation. See Edwards v. Arthur Andersen LLP, 44 Cal. 4th 937, 953 (2008). Under the general rules of interpretation, "[i]f a contract is capable of two constructions courts are bound to give such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect . . . ." Id. at 953-54 (quoting Rodriguez v. Barnett, 52 Cal. 2d 154, 160 (1959)); see also Cal. Civ. Code. § 3541 ("An interpretation which gives effect is preferred to one which makes void."). The Court finds that "applicable law" and "controlling federal law" must be interpreted to mean the law as it stands at the time of enforcement rather than execution. This conclusion is consistent with the tenets of contractual interpretation because it makes the Class Action Waiver provisions lawful, valid, and

capable of being carried into effect. The Class Action Waiver provisions are therefore valid and enforceable against Plaintiff.

IV. CONCLUSION

Pursuant to 9 U.S.C. § 3, the action is stayed pending the arbitrator's determination of whether Plaintiff's non-PAGA claims are arbitrable, and if they are, the resolution of the arbitration. If found to be arbitrable, Plaintiff's non-PAGA claims must be raised on an individual basis in arbitration. Plaintiff's PAGA claim is stayed pending the resolution of the arbitration.

The parties are to proceed expeditiously and to file a joint status report every 90 days, with the first report due March 11, 2019. Each report shall state on the caption page the date the next report is due. The parties must advise the Court within 30 days of issuance of the final award.

IT IS SO ORDERED.

Date: December 11, 2018

Dale S. Fischer
United States District Judge