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WESTERN DISTRICT OF TEXAS
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RAMON RODRIGUEZ, individually, JESUS RODRIGUEZ, JR., individually, ROSAELIA BENAVIDEZ, individually, and as All Heirs to JESUS RODRIGUEZ, deceased,

Plaintiffs,

v.

SSC SAN ANTONIO WEST OPERATING COMPANY LLC d/b/a RETAMA MANOR NURSING CENTER / SAN ANTONIO WEST,

Defendant.

§ No. SA-18-CV-00741-OLG

ORDER

On this day, the Court considered Defendant SSC San Antonio West Operating Company LLC d/b/a Retama Manor Nursing Center / San Antonio West's ("Defendant's") Motion to Compel Arbitration (the "Motion") (docket no. 11). Having considered the Motion and Defendant's brief in support, the Court finds that the Motion should be granted.

BACKGROUND

Plaintiffs Ramon Rodriguez, individually, Jesus Rodriguez, Jr., individually, Rosaelia Benavidez, individually, and as All Heirs to Jesus Rodriguez, deceased (collectively, "Plaintiffs") assert claims for negligence and gross negligence against Defendant. *See* docket no. 1-1. Specifically, Plaintiffs' Complaint alleges that Defendant was negligent or grossly negligent in its care of Jesus Rodriguez, a resident at Defendant's Retama Manor Nursing Center. *See id.* at ¶¶ 33-38. Plaintiffs further allege that as a result of Defendant's actions, Jesus Rodriguez suffered

injuries that later caused his death. *See id.* at ¶ 38. Plaintiffs' Complaint seeks various forms of monetary damages. *See id.* at ¶ 39. Following Plaintiffs' initiation of the action in state court, Defendant removed the action to this Court. *See* docket no. 1.

On October 19, 2018, Defendant filed a Motion to Compel Arbitration. *See* docket no. 11. In the Motion, Defendant asserts that Defendant and Plaintiff Ramon Rodriguez (on behalf of Jesus Rodriguez) entered into a signed "Dispute Resolution Program" (the "DRP") (attached as docket no. 11-1). The DRP states that "all disagreements with residents and their families or legal representatives" would be resolved through the dispute resolution program, and the program mandates that such disputes be resolved through mediation and/or arbitration. *See* docket no. 1-1 pp. 1-2. The DRP further states that "the parties agree to waive the right to a judge or a jury trial." *See id.* at p. 1. On that basis, Defendant seeks an order requiring the parties to arbitrate the entirety of their dispute. *See* docket no. 11. Although Defendant's Motion indicates that Plaintiffs oppose Defendant's request, *see id.* at p. 11, as of the date of this Order, Plaintiffs have not filed a response.

DISCUSSION

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq*., embodies a strong policy in favor of arbitration, *see Sourhland v. Keating*, 465 U.S. 1, 10 (1983), and the FAA "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). 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) (emphasis in original). Accordingly, a motion to compel arbitration pursuant to the FAA should be granted if the Court finds that the parties agreed to arbitrate the dispute in

question and that no "legal constraints external to the parties' agreement foreclosed the arbitration of those claims." *Webb v. Investacorp, Inc.*, 89 F.3d 252, 258 (5th Cir. 1996) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985)). The first step of this inquiry, in turn, involves two considerations: "(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement." *Id.*

The parties' DRP clearly sets forth procedures for dispute resolution, and specifically states that disputes that cannot be resolved in mediation will be resolved by binding arbitration. *See* docket no. 11-1 p. 2. The DRP describes how any such arbitration will occur, and the agreement also mandates that Defendant utilize arbitration should it have its own claims against Plaintiffs. *See id.* at pp. 2-5. Importantly, the DRP is signed by Plaintiff Ramon Rodriguez (on behalf of Jesus Rodriguez and his "family, heirs and/or legal representatives") and by Defendant. *See* docket no. 11-1. Thus, on its face, the DRP appears to be an enforceable arbitration agreement that binds all parties in this action. Furthermore, there is no evidence in the record suggesting that that the agreement to arbitrate is not valid and binding upon any of the parties, nor did Plaintiffs assert such an argument in response to Defendant's Motion. For that reason, the first prong of the analysis—the existence of a valid arbitration agreement—appears to be satisfied.

The allegations in Plaintiffs' Complaint also clearly demonstrate that Plaintiffs' claims fall under the scope of the DRP's arbitration clause, such that the second consideration in the first portion of the analysis is also satisfied. Specifically, the DRP covers all "disagreements with residents and their families or legal representatives," including "disagreements about care and other services" provided by Defendant. Docket no. 11-1 p. 1. Plaintiffs' negligence and gross negligence claims—which are asserted by the family members and legal representatives of resident

Jesus Rodriguez in relation to the care he received at Defendant's facility—fall squarely under that scope. Thus, the record indicates that there is a valid arbitration agreement, and that agreement appears to cover the scope of all of Plaintiffs' pending claims.[1]

Finally, the record is also devoid of any indication of legal constraints external from the DRP that would foreclose arbitration of Plaintiffs' claims against Defendant.[2] For that reason, there appears to be no basis on which the agreement to arbitrate in the DRP should not be enforced, and the Court therefore must conclude that Defendant's Motion to Compel Arbitration (docket no. 11) should be granted. *See Byrd*, 470 U.S. at 218. Accordingly, the case will be ordered to arbitration.[3]

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[1] Further, even to the extent there is a question as to the validity of the agreement or the scope of the parties' agreement, the DRP contains a delegation provision that demonstrates the parties' intent to arbitrate any issues of arbitrability. Specifically, the DRP states that "[t]he arbitrator is required to apply and enforce the terms of this Agreement. Any disagreements regarding the interpretation of this Agreement must be decided by the arbitrator and not by a judge or jury." Docket no. 1-1 p. 3. Importantly, the Supreme Court has held that such gateway delegation provisions are enforceable. *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010). Specifically, in *Rent-A-Center*, the Supreme Court found enforceable a gateway provision that stated that "[t]he Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this [Arbitration] Agreement including, but not limited to any claim that all or part of this Agreement is void or voidable." *Id.* at 66, 68-69 & n.1

[2] Plaintiffs did not respond to Defendant's Motion; however, the Court has conducted an independent review of the relevant case law and has found no legal reason why arbitration cannot be compelled. Instead, the case law the Court has identified indicates that arbitration should be ordered in this case. In *Fredericksburg Care Company, L.P. v. Perez*, 461 S.W. 3d 513, 526-28 (Tex. 2015), the Texas Supreme Court held that the FAA pre-empted a section of the Texas Civil Practice and Remedies Code that created extra requirements for arbitration agreements related to medical negligence or malpractice claims. On that basis, the *Perez* Court determined that the trial court should have enforced an arbitration agreement between a nursing home and a resident who had filed a negligent care suit against the facility. *See id.*

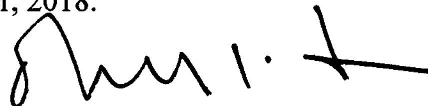
[3] Defendant's Motion does not address whether the action should be stayed, dismissed, or administratively closed following the Court's determination that the claims should be ordered to arbitration. Although some circuit courts have held that actions should be stayed pending the conclusion of arbitration, *see Lloyd v. Hovensa, LLC*, 369 F.3d 263, 269-71 (3d Cir. 2004), the Fifth Circuit is among the majority of circuits that have concluded that an action may be dismissed when *all* underlying claims are subject to the arbitration agreement. *See Alford v. Dean Witter*

CONCLUSION AND ORDER

For the reasons set forth above, Defendant's Motion to Compel Arbitration (docket no. 11) is **GRANTED.** This matter is therefore **ORDERED** to arbitration in its entirety.

It is further **ORDERED** that this case is administratively closed.

SIGNED this 26 day of November, 2018.



ORLANDO L. GARCIA
Chief United States District Judge

Reynolds, Inc., 975 F.2d 1161, 1164-65 (5th Cir. 1992); *Fedmet Corp. v. M/V Buyalyk*, 194 F.3d 674, 676-77 (5th Cir. 1999); *see also Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001). Although the Court has concluded that all claims in this action are subject to the parties' arbitration agreement, the Court is hesitant to formally dismiss the action given that neither party has made such a request or briefed the issue. Instead, the action will be administratively closed pending resolution of the arbitration.