UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-81513-CV-MIDDLEBROOKS/Brannon

ALISON S. INGA,

Plaintiff,

v.

THE NATURE'S BOUNTY COMPANY
and AMAZON.COM, INC.,

Defendants.

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ORDER ON MOTION TO COMPEL ARBITRATION

THIS CAUSE comes before the Court upon Defendant Amazon.com, Inc.'s ("Amazon") Motion to Compel Arbitration, filed on October 30, 2020. (DE 11). Plaintiff Alison S. Inga responded on November 13, 2020, stating that she believes the Motion is "well taken" and that she "does not contest" same. (DE 18). In its Motion, Amazon requests that the Court either (1) dismiss this action without prejudice so that Plaintiff may pursue her case in arbitration or (2) direct the Parties to arbitrate and stay these proceedings. (DE 11 at 17–18). For the following reasons, the Motion is granted.

On November 18, 2020, I issued an Order directing Plaintiff and Defendant The Nature's Bounty Company ("Nature's Bounty") to confer with one another and to file a joint status report apprising the Court of their position(s) regarding dismissing or staying this action pending arbitration between Plaintiff and Amazon. (DE 19). Plaintiff and Nature's Bounty filed a status report in compliance with my Order, in which they confirm that the Motion to Compel Arbitration applies only to the dispute between Plaintiff and Amazon and assert that the claims against Nature's Bounty should continue before this Court pursuant to the Pretrial Scheduling Order. (DE

20 ¶ 1). All Parties further request that I stay proceedings against Amazon at this time, allow Plaintiff's claim to continue against Nature's Bounty, and retain jurisdiction to compel arbitration between Plaintiff and Amazon in the future and to enforce any arbitration award, if necessary. (DE 20 ¶ 2).

Agreements to arbitrate are enforced pursuant to the Federal Arbitration Act ("FAA"). *See* 9 U.S.C. § 2[1]; *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 110 (2001) ("[T]he FAA compels judicial enforcement of a wide range of written arbitration agreements."). When considering whether to enforce an arbitration agreement, a court must first determine whether the parties agreed to arbitrate their dispute. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). Next, a court must consider "whether legal constraints external to the parties' agreement foreclosed the arbitration of those claims." *Id.* at 627–28.

Here, Plaintiff and Amazon agree that they are both bound by the arbitration provision of Amazon's Conditions of Use ("COU"). Further, the Court finds that Plaintiff's claims against Amazon can be submitted to arbitration, as the terms of the agreement may fairly be read to cover the claims at issue in this lawsuit. The arbitration provision of the COU is, therefore, enforced, and Plaintiff and Amazon must arbitrate this matter. In light of this conclusion, a stay of this action is warranted. *See* 9 U.S.C. § 3.[2] The question, then, before the Court is not *whether* to compel arbitration but rather *when* to do so.

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[1] Section two of the FAA provides that "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, 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.

[2] Section 3 of the FAA provides that "[i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such

In considering this question, I will make a few general observations about this case. First, Plaintiff brings three nearly identical counts against each Defendant for Strict Liability (Counts I and IV), Breach of Implied Warranty (Counts II and V), and Negligence (Counts III and VI). (DE 1-5 at 6–10). Second, both Defendants are represented by the same counsel. Because Plaintiff's claims against each Defendant are substantially similar and arise out of the same set of factual circumstances, (*See generally id.*), should I stay this matter against Amazon now, any dispositive ruling I may issue with regard to same will most likely bear upon future arbitration.

Final disposition of this matter will necessitate that one party prevail and one party lose, an outcome that as a matter of public record, would be available to inform potential arbitration proceedings. I find that this may work an unfairness toward the losing party to these proceedings, which would seem to run counter to the idea of engaging in alternative dispute resolution in the first place. After all, the purpose of alternative dispute resolution is to allow parties to resolve issues without court intervention; this purpose would appear controverted should one party have the benefit of judicial resolution of claims that are directly related to the claims that must, should they ever be pursued, be submitted to arbitration. As such, in the interest of fairness, I am disinclined to stay these proceedings against Amazon presently while reserving jurisdiction to compel arbitration at a later date once Plaintiff and Nature's Bounty have had the opportunity to try the claims that, in substance, Plaintiff and Amazon would ultimately have to arbitrate.

In addition, the manner in which the Parties propose that I proceed in this case raises questions of judicial economy. Plaintiff and Amazon agree that compelling arbitration as to their

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arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, 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.

dispute is the correct outcome but that Plaintiff's pursuit of such claims is appropriate once her claims against Nature's Bounty have been resolved. I agree with the Parties' implied position that proceedings in this Court and those in arbitration should not occur simultaneously, as such parallel proceedings would not serve judicial economy. Where I disagree with the Parties is on the timing of compelling arbitration. Given that the claims between Plaintiff and Amazon must be arbitrated, doing so after the expenditure of judicial resources on substantially similar claims would be inefficient.

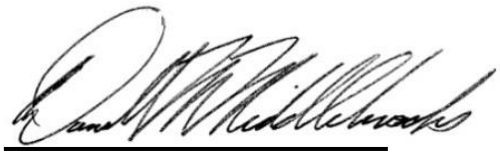
Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

(1) Defendant Amazon.com, Inc.'s Motion to Compel Arbitration (DE 11) is **GRANTED**. Plaintiff and Amazon shall arbitrate this matter consistent with Amazon's Conditions of Use.

(2) This action is **STAYED** pending resolution of the arbitration. Plaintiff and Amazon shall file a joint-status report within 14 days after the arbitration award is issued, at which time any Party may move to lift the stay so that Plaintiff's claims against Nature's Bounty may proceed in this forum.

(3) The Clerk of Court shall administratively **CLOSE** this case.

DONE AND ORDERED in Chambers in West Palm Beach, Florida, this 7th day of December, 2020.



Donald M. Middlebrooks
United States District Judge

Copies to: Counsel of Record