PRIORITY SEND

JS-6 (Stayed)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. EDCV 12-00886 VAP (OPx) Date: September 24, 2012

Title: CILLUFFO, et al. -*v*- CENTRAL REFRIGERATED SERVICES, INC., et al.

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PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard Courtroom Deputy	None Present Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None	None

PROCEEDINGS: MINUTE ORDER GRANTING MOTION TO COMPEL ARBITRATION AND MOTION TO STAY, AND DENYING MOTION TO DISMISS (IN CHAMBERS)

Before the Court is a Motion to Compel Arbitration, and to Dismiss or in the Alternative Stay Action ("Motion") (Doc. No. 25) filed by Defendants Central Refrigerated Services, Inc., Central Leasing, Inc., Jon Isaacson, and Jerry Moyes (collectively, “Defendants”). The matter came before the Court for hearing on September 17, 2012. The Court has considered all papers filed in support of, and in opposition to, the Motion, and the arguments put forth at the hearing, and for the reasons set forth below, the Court (1) GRANTS the Motion to Compel Arbitration; (2) GRANTS the Motion to Stay, and (3) DENIES the Motion to Dismiss.

I. BACKGROUND

On June 1, 2012, Plaintiffs Gabriel Cilluffo, Kevin Shire, and Bryan Ratterree filed a Collective and Class Action Complaint ("Complaint") (Doc. No. 1) against Defendants Central Refrigerated Services, Inc., Central Leasing, Inc., Jon Isaacson, and Jerry Moyes (collectively, "Defendants") alleging that Defendants failed to pay minimum wages to Plaintiffs in violation of the Fair Labor Standards Act ("FLSA") and that Defendants caused Plaintiffs to engage in forced labor for Defendants in violation of the federal forced labor statutes. Twenty-eight other persons have filed Notices of Consent to opt-in to the litigation as party plaintiffs. (Mot. at 6.)

Defendant Central Refrigerated Service, Inc. ("CRS") is a refrigerated trucking company specializing in transportation via tractor-trailers and trucks of temperature sensitive freight. (Mot. at 3.) CRS is a Nebraska corporation, headquartered in Salt Lake City, Utah. (Id.) Defendant Central Leasing, Inc. ("CLS") is a company that leases trucks and trailers, primarily to independent contractors. (Id. at 5.) CLS is a Nevada corporation, headquartered in Salt Lake City, Utah. (Id.) Defendant Jon Isaacson ("Isaacson") is the Chief Executive Officer of both CRS and CLS, and Defendant Jerry Moyes ("Moyes") is the Director of CRS. (Compl. at ¶¶ 45, 47). Isaacson and Moyes have ownership interests in both companies. (Id.)

To transport their freight, CRS uses both drivers employed by CRS and drivers who have signed contractor agreements to transport freight for its customers. (Id. at 3.) Some of CRS's independent contractor drivers lease their trucks and trailers from CLS. (Id. at 5.)

CRS entered into individual Contractor Agreements with the three named Plaintiffs and the twenty-eight opt-in Plaintiffs (the "Contractor Agreements") to work as drivers for CRS. (Mot. at 10-11.) CLS entered into individual Equipment Leasing Agreements with the same Plaintiffs (the "Equipment Leasing Agreements") to rent trucks from CLS. (Id. at 10.) Both the Contractor Agreements and the Equipment Leasing Agreements (collectively, the "Agreements") contain a "Governing Law and Arbitration Clause." (Id. at 10-11.) The clause states, in part:

> This Agreement shall be governed by the laws of the State of Utah. Any dispute (including a request for preliminary relief) arising in connection with or relating to this Agreement, its terms, or its implementation including any allegation of a tort, or of breach of this Agreement, or of violations of Applicable Law, including but not limited to the DOT Leasing Regulations will be fully and finally resolved by arbitration in accordance with (1) the Commercial Arbitration Rules (and related arbitration rules governing requests for preliminary relief) of the American Arbitration Association ("AAA"); (2) the Federal Arbitration Act (ch. 1 of tit. 9 of United States Code, with respect to which the parties agree that this Agreement is not an exempt "contract of employment") or, if the Federal Arbitration Act is held not to apply, the arbitration laws of the State of Utah; and (3) the procedures that follow. Notwithstanding anything to the contrary contained or referred to herein, no consolidated or class arbitrations will be conducted. If a court or arbitrator decides for any reason not to enforce this ban on consolidated or class arbitrations, the parties agree that this provision, in its entirety, will be null and void, and any disputes between the parties will be resolved by court action, not arbitration. A Demand for Arbitration will be filed with the AAA's office located in or closest to Salt Lake City, Utah, and will be filed within the time allowed by the applicable statute of limitations. Failure to file the Demand within such statute-of-limitations period will be deemed a full waiver of the claim. The place of the arbitration hearing will be Salt Lake City, Utah.

(Baker Decl. Exs A-G at § 18; Baer Decl. Exs. A-G at § 21.)

On July 16, 2012, Defendants filed this Notice of Motion and Motion to Compel Arbitration, and To Dismiss or in the Alternative Stay Action ("Mot.") (Doc. No. 25), the Declaration of Robert D. Baer in Support of Defendants' Motion to Compel Arbitration ("Baer Decl.") with Exhibits A to G (Doc. No. 26), the Declaration of William J. Baker In Support of Defendants' Motion to Compel Arbitration ("Baker Decl.") with Exhibits A to G (Doc. No. 27), and the Declaration of Drew R. Hansen in

Support of Defendants' Motion to Compel Arbitration ("Hansen Decl.") (Doc. No. 28).[1]

On August 10, 2012, Plaintiffs filed a Memorandum of Points and Authorities in Opposition to Defendants' Motion to Compel Arbitration ("Opp.") (Doc. No. 40); the Declaration of Dan Getman ("Getman Decl.") (Doc. No. 40-1); the Declaration of Gabriel Cilluffo ("Cilluffo Decl.") with Exhibits 1 to 4 (Doc. No. 40-2); the Declaration of Landon Clifford ("Clifford Decl.") with Exhibits 1 to 5 (Doc No. 40-3); the Declaration of Darryl Costlow ("Costlow Decl.") (Doc. with Exhibits 1 to 3 (Doc. No. 40-4); the Declaration of Vincent Crupi ("Crupi Decl.") with Exhibits 1 to 4 (Doc. No. 40-5); the Declaration of Jerome Dubiak ("Dubiak Decl.") with Exhibit 1 (Doc. No. 40-6); the Declaration of Aaron Pengilly ("Pengilly Decl.") with Exhibits 1 to 2 (Doc. No. 40-7); the Declaration of Joey Perkins ("Perkins Decl.") with Exhibits 1 to 2 (Doc. No. 40-8); the Declaration of Bryan Ratterree ("Ratterree Decl.") with Exhibits 1 to 8 (Doc. No. 40-9); and the Declaration of Kevin Shire ("Shire Decl.") with Exhibit 1 (Doc. No. 40-10).[2]

On August 31, 2012, Defendants filed a Reply in Support of Their Motion to Compel Arbitration, and to Dismiss Or in the Alternative Stay Action (Doc. No. 45); the Supplemental Declaration of William J. Baker, Jr., In Support of Reply Re Defendants' Motion to Compel Arbitration (Doc. No. 45-1); and Evidentiary Objections to Plaintiffs' Proffered Evidence, objecting on various grounds to each of

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[1]The mandatory chambers copies of both the Baker Decl. and Baer Decl. fail to comply with the document "tabbing" requirements by failing to place exhibit numbers "immediately above or below the page number on each page of the exhibit." L.R. 11-5.3; see also Standing Order at 7. The Court, at its discretion, may strike documents for failure to comply with the Local Rules.

[2]The Getman, Clifford, Costlow, Crupi, Dubiak, Pengilly, Perkins, Ratterree, and Shire Declarations filed by Plaintiffs in support of their Opposition fail to comply with the font requirements of Local Rule 11-3.1.1 and the technical requirements of Local Rule 5-3.1; see also Standing Order at 7. The Court, at its discretion, may strike documents for failure to comply with the Local Rules.

the declarations submitted in support of Plaintiffs' Opposition (Doc. Nos. 45-2 to 45-11).[3]

II. LEGAL STANDARD

"[A]n agreement to arbitrate is a matter of contract: 'it is a way to resolve those disputes — but only those disputes — that the parties have agreed to submit to arbitration.'" Chiron Corp. v. Ortho Diagnostic System, Inc., 207 F.3d 1126, 1130 (9th Cir. 2000) (quoting First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995)).

The FAA requires that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . 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. Commerce is defined as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation . . . ." 9 U.S.C. § 1. Through the FAA, Congress created a liberal federal policy favoring arbitration agreements. Perry v. Thomas, 482 U.S. 483, 489 (1987) (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)); AT&T Mobility LLC v. Concepcion, __ U.S. __, 131 S. Ct. 1740, 1745 (2011).

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[3]The Court did not consider the Declarations submitted in support of Plaintiffs' Opposition. Rather, the Court relied exclusively on the allegations in the Complaint and in the moving papers. Therefore, the Court will not rule on Defendants' evidentiary objections.

Note, also, that Defendants' Reply, the Baker Declaration, and the Evidentiary Objections failed to comply with the technical requirements of Local Rule 5-4.3.1. The Court, at its discretion, may strike documents for failure to comply with the Local Rules.

Under the Federal Arbitration Act ("FAA"), "upon being satisfied that the making of the agreement for arbitration . . . is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4. The district court must determine (1) whether a valid, enforceable arbitration agreement exists and (2) whether the claims asserted in the complaint are within the scope of the arbitration agreement. See id.; Chiron, 207 F.3d at 1130; Howard Elec. & Mech. Co., Inc. v. Frank Briscoe Co., Inc., 754 F.2d 847, 849 (9th Cir. 1985).

"[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses, 460 U.S. at 24–25. "The standard for demonstrating arbitrability is not high. . . . Such [arbitration] agreements are to be rigorously enforced." Simula, Inc. v. Autoliv, Inc., 175 F.3d 716, 719 (9th Cir. 1999). The FAA's enactment "was motivated, first and foremost, by a congressional desire to enforce agreements into which parties had entered." Volt Info. Sci., Inc. v. Bd. of Tr. of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1989). "[T]he FAA does not require parties to arbitrate when they have not agreed to do so . . . . It simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." Id.

III. DISCUSSION

A. Section 1 Exemption to the FAA

Section 1 of the FAA exempts from arbitration "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Section 1 imposes a limit on the FAA's scope. In re Van Dusen, 654 F.3d 838, 843 (9th Cir. 2011). In In re Van Dusen, the Ninth Circuit considered an issue of first impression in the federal courts of appeal: "whether the district court must itself determine the applicability of a Section 1 exemption, or whether the exemption question is a 'question of arbitrability' that contracting parties may validly delegate to an arbitrator." Id.

The Ninth Circuit found that the determination of whether the Section 1 exemption applies is not a question of arbitrability; rather, it is an "antecedent determination" that the Court must first consider to determine "whether the agreement at issue is of the kind covered by the FAA." Id. at 843-44. Therefore, the

district court must "assess whether a Section 1 exemption applies before ordering arbitration." Plaintiffs, in opposing arbitration under the FAA, have the burden of demonstrating the exemption. Rogers v. Royal Caribbean Cruise Line, 547 F.3d 1148, 1151 (9th Cir. 2008).

The parties here dispute the applicability of the Section 1 exemption and the determination of that dispute turns on whether Plaintiffs are independent contractors or employees. Defendants argue that Plaintiffs are independent contractors and therefore, they do not fall within the exemption because it applies only to "contracts of employment." Plaintiffs, on the other hand, contend that they are employees and thus exempt under Section 1. Under Van Dusen, the Court must resolve this dispute in order to determine whether Plaintiffs are exempt under Section 1 before determining whether to compel arbitration.

The Ninth Circuit has held that "[f]ederal substantive law governs the question of arbitrability." Simula, 175 F.3d at 719. In determining whether an employer-employee relationship exists for federal regulatory purposes, the Court must "rel[y] on the general common law of agency, rather than on the law of any particular State." Cmty. for Creative Non-Violence, et al. v. Reid, 490 U.S. 730, 740 (1989). This "practice reflects the fact that 'federal statutes are generally intended to have uniform nationwide application.'" Id., citing Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 43 (1989). The Court considers a number of factors, including:

> [t]he hiring party's right to control the manner and means by which the product is accomplished. . . . the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Id. at 751-52.

Although a mixed bag, the allegations in Plaintiffs' Complaint favor a finding that they were employees and not independent contractors. First, Plaintiffs allege that Defendants exercised significant control over them. Plaintiffs allege that Defendants controlled "the amount of hours that Plaintiffs may drive in a week" and "when, where, and how Plaintiffs deliver freight." (Compl. at ¶ 9.) Defendants allegedly "monitor and control the time of Plaintiffs' departure and the time of arrival." (Compl. at ¶ 75.) Defendants monitor Plaintiffs' "exact location, speed, route compliance, ETA, rest time and driving time and other aspects of job performance" through an on-board computer/GPS system. (Compl. at ¶ 75.) Plaintiffs also allege that Defendants "prohibit" Plaintiffs from working for other trucking companies. (Compl. at ¶ 7.) This level of control favors a finding that Plaintiffs are employees.

Additionally, Defendants lease the trucks to Plaintiffs, and Defendants allegedly "control the equipment that Plaintiffs use, including its operation, maintenance, and condition." (Compl. at ¶ 9.) Defendants also "prohibit[] Plaintiffs from using the truck[s] they lease to drive for other trucking companies." (Compl. at ¶ 12.) Moreover, Defendants attach a "speed governor" to the trucks in order to control the speed that Plaintiffs drive. (Compl. at ¶ 9.) Defendants' control over the equipment further supports a finding that Plaintiffs are employees.

Defendants argue that Plaintiffs are not employees because the Contractor Agreements state that Plaintiffs "shall be considered an independent contractor and not an employee." (Mot. at 16.) "The contractual language, however, is not conclusive" because "[e]conomic realities, not contractual labels, determine employment status." Real v. Driscoll Strawberry Associates, Inc., 603 F.2d 748, 755 (9th Cir. 1979). The "economic realities" here favor a finding that Plaintiffs are employees. Defendants also allege that CLS cannot be considered an employer because they were "simply a lessor of equipment." (Reply at 1.) This is unpersuasive. CRS and CLS are intertwined, and the level of control exerted by Defendants over both Plaintiffs and their trucks indicates that CLS cannot simply be excluded by virtue of a being contractually labeled a "lessor."

Defendants also argue that "drivers use their own equipment to transport goods." (Mot. at 4.) This equipment, however, is leased to Plaintiffs by Defendants and heavily controlled by Defendants. Defendants further allege that drivers "may hire their own assistants and employees to work for them," "pay their own repair and maintenance, use taxes, fuel charges, and other fees," and are "paid for each loaded mile that goods are transported." (Mot. at 4-5.) These factors favor a finding that Plaintiffs are independent contractors. On balance, however, and in consideration of all the factors, these arguments are insufficient to counter a finding that Plaintiffs are employees.

The remaining factors favor this Court's conclusion that Plaintiffs are employees. There is a certain level of skill required in Plaintiffs' work, and at the very least, special licensing is required. The relationship between Plaintiffs and Defendants is ongoing, as opposed to an isolated project, and Defendants were free to continue assigning additional projects to Plaintiffs. The work conducted by Plaintiffs is the "primary business in which CRS engages–the transportation of goods." (Compl. at ¶ 70.) Finally, as discussed above, Defendants exerted control over when and how long Plaintiffs worked. Therefore, although the factors are mixed, the Court finds, based on the Complaint and the moving papers, that Plaintiffs are employees, not independent contractors.

Having determined that Plaintiffs are employees, the Court must also determine whether Plaintiffs are "transportation workers" engaged in "foreign or interstate commerce" in order to determine whether the Section 1 exemption applies. 9 U.S.C. § 1; Circuit City Stores v. Adams, 532 U.S. 105, 112, 115 (2001). There is no dispute that Plaintiffs are transportation workers engaged in interstate commerce: they are truck drivers that deliver freight across the country. (Mot. at 3.)

Accordingly, the Court finds that the Section 1 exemption applies, and therefore, the Court refuses to compel arbitration under the FAA.

B. Applicability of Utah Law

In the Agreements, the arbitration clause states that, if the FAA is held not to apply, the "arbitration laws of the State of Utah" would govern. (Baker Decl. Exs A-G at § 18; Baer Decl. Exs. A-G at § 21.)

As an initial matter, the Court must apply a choice of law analysis to assess the choice of law provision in the Agreements. Federal common law applies to choice of law determinations in cases based on federal question jurisdiction, such as this one. Chan v. Society Expeditions, 123 F.3d 1287, 1297 (9th Cir. 1997). Federal common law follows the Restatement (Second) of Conflict of Laws. Bassidji v. Goe, 413 F.3d 928, 933 n.8 (9th Cir. 2005). "Under the Restatement, courts should enforce the parties' choice of law if the issue 'is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.'" Chan, 123 F.3d at 1297, citing Restatement (Second) of Conflicts of Laws § 187(1) (1988). "Even if the parties could not have directed a contractual provision to the issue, courts should honor their choice unless the chosen state has no substantial relationship to the parties' choice or application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and that state would be the state of applicable law in the absence of a choice-of-law clause." Id. (internal quotations omitted).

Here, the parties explicitly agreed to have the arbitration laws of Utah govern, in the event that the FAA was held not to apply. Even if the parties had not explicitly chosen Utah arbitration laws, Utah has a substantial relationship to the parties. Defendants are headquartered in Utah, and a majority of the Agreements were executed in Utah. Furthermore, there is no allegation by either party that a state other than Utah has a materially greater interest in deciding the issues in this case. Therefore, the Court finds that Utah arbitration law governs.

Under the Utah Uniform Arbitration Act ("UUAA"), "[a]n agreement . . . to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable." Utah Code Ann. 78B-11-107(1). The UUAA was enacted in accordance with a public policy that favors arbitration. ASC Utah, Inc. v. Wolf Mt. Resorts, L.C., 245 P.3d 184, 191 (Utah 2010). "It is the policy of the law in Utah to interpret contracts in favor of arbitration." Cent. Fla. Invs., Inc. v. Parkwest Assocs., 40 P.3d 599, 606 (Utah 2002).

Plaintiffs argue that the effect of a Section 1 exemption is to leave the

arbitrability of disputes in the exempted category as if the FAA had never been enacted. (Opp. at 4.) Plaintiffs cite case law from the 1920's and 1930's to demonstrate that, before the FAA was enacted, there was a common law rule against specific enforcement of arbitration agreements. (Opp. at 5-6.) Plaintiffs' argument is not persuasive.

The passage of the FAA was motivated by a desire to enforce agreements into which parties had entered. Palcko v. Airborne Express, Inc., 372 F.3d 588, 595 (3rd Cir. 2004). To enforce an arbitration agreement between the parties under Utah law "does not contradict any of the language of the FAA, but in contrast furthers the general policy goals of the FAA favoring arbitration." Id. at 596. For instance, in Luong v. Circuit City Stores, Inc., the court found that the FAA did not apply, and instead considered whether to apply the Virginia Arbitration Act ("VAA"). 2001 WL 935317, at *3 (C.D. Cal. Mar. 28, 2001). Holding arbitration was compelled under the FAA, the Luong court found that the VAA did "not undermine [the FAA's] goals, but rather promotes the FAA's goals by enforcing a private agreement to arbitrate that plaintiff does not dispute entering." Here, compelling arbitration under Utah law would also promote the FAA's goals, primarily by enforcing the agreement between the parties.

Plaintiffs also argue that the Section 1 exemption preempts enforcement under the UUAA. This argument is also unconvincing. "There is no language in the FAA that explicitly preempts the enforcement of state arbitration statutes." Palcko, 372 F.3d at 595; see also Luong v. Circuit City Stores, Inc., 2001 WL 935317 (C.D. Cal. Mar. 28, 2001) (finding that the FAA does not contain a preemptive provision). In Palcko, as is the case here, the parties agreed that state arbitration law would apply in the event that the FAA was inapplicable. Palcko, 372 F.3d at 596. The Palcko court found it to be "telling that the arbitration agreement itself envisioned the possibility that [Plaintiff's] employment contract would be deemed exempt from the FAA's coverage under section 1 of the Act." Palcko, 372 F.3d at 596. The court compelled arbitration under state law finding that there is "no reason to release the parties from their own agreement." Id. at 596.

In order to compel arbitration under the UUAA, the Court must determine whether the Agreements are enforceable. "An agreement . . . to submit to arbitration

any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract." Utah Code Ann. § 78B-11-107(1). The "court [shall] order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate." Utah Code Ann. 78B-11-108(2). The UUAA "applies to any agreement to arbitrate made on or after May 6, 2002." Utah Code Ann. § 78B-11-104(1). "[O]nly written agreements are enforceable under the Act." Pac. Dev. v. Orton, 23 P.3d 1035, 1038 (Utah 2001).

The Agreements here are written and were executed by all parties after May 6, 2002. (Mot. at 12, 21.) Plaintiffs do not allege that there are any grounds upon which the contract, as a whole, must be found to be unenforceable. Plaintiffs, however, do challenge as unenforceable a prohibition on class arbitration. This argument will be addressed in turn.

C. Class Arbitration Prohibition

The arbitration clause in the Agreements states that "no consolidated or class arbitrations will be conducted" (the "Prohibition") (Baker Decl. Exs A-G at § 18; Baer Decl. Exs. A-G at § 21). Plaintiffs set forth a number of arguments that the Prohibition is unenforceable.

As an initial matter, the Supreme Court has articulated a strong policy choice in favor of enforcing arbitration agreements and has found that "[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." Concepcion, 131 S. Ct. at 1748. The Supreme Court further held that class arbitration "is not arbitration as envisioned by the FAA, lacks its benefits, and therefore may not be required by state law." Id. at 1753. Similarly, under the UUAA, contractual prohibitions against consolidated arbitrations are enforceable. Utah Code Ann. § 78B-11-111(3); see also Miller v. Corinthian Colleges, Inc., 769 F. Supp. 2d 1336, 1349 (D. Utah 2011) ("the Court cannot find that the class action waivers are substantively unconscionable" and "are not procedurally unconscionable" under Utah law).

Plaintiffs first argue that the Prohibition violates Section 7 of the National Labor

Relations Act ("NLRA"). (Opp. at 11.) Section 7 of the NLRA states that employees have the right "to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. Plaintiffs rely on D.R. Horton, Inc. and Michael Cuda, 357 N.L.R.B. No. 184 (2012), a National Labor Relations Board ("NLRB") decision that found that class and collective action waivers in employment agreements are prohibited by the NLRA. (Opp. at 12.) The federal courts, however, have rejected Horton. In Morvant v. P.F. Chang's China Bistro, Inc., the District Court for the Northern District of California found "that the NLRA is not a bar to enforcement of agreements to arbitrate non-NLRA claims on an individual basis." 2012 WL 1604851, at *9 (N.D. Cal. 2012); see also Jasso v. Money Marty Exp., Inc., 2012 WL 1309171, at *10 (N.D. Cal. Apr. 13, 2012) (Horton does not overcome the "direct, controlling authority holding that arbitration agreements, including class action waivers contained therein, must be enforced according to their terms"). Accordingly, Plaintiffs' argument lacks merit.

Plaintiffs next argue that the Prohibition violates the Norris-LaGuardia Act (NLA) because the NLA prevents federal courts from prohibiting collective action taken during a labor dispute. (Opp. at 16.) Plaintiffs, however, cite no authority for the argument that the NLA prohibits class arbitration waivers. Moreover, federal courts have rejected the argument that the NLA applies to arbitration agreements. Morvant, 2012 WL 1604851, at *10; Jasso, 2012 WL 1309171, at *23 ("there is no language in the . . . Norris-LaGuardia Act [] demonstrating that Congress intended the employee concerted action rights therein to override the mandate of the FAA").

Plaintiffs finally argue that the FLSA grants workers a non-waivable right to collective enforcement. Opp. at 21. Plaintiffs primarily rely on two decisions from the Southern District of New York -- Raniere v. Citigroup, Inc., 827 F. Supp. 2d 294 (S.D.N.Y. 2011) and Sutherland v. Ernst & Young LLP, 768 F. Supp. 2d 547 (S.D.N.Y. 2011) -- to support their argument that the FLSA renders a class waiver unenforceable. These cases are not binding authority, and they are also in conflict with the Supreme Court's decision in Concepcion. See LaVoice v. UBS Financial Services, Inc., 2012 WL 124590, at *6 (S.D.N.Y. Jan. 13, 2012) (declining to follow Raniere because it conflicted with Concepcion). In finding that a class waiver provision was unenforceable, Sutherland, decided before Concepcion, found that "the arbitration of a statutory claim will be compelled only if that claim can be

effectively vindicated in the arbitral forum." 768 F. Supp. 2d at 549. This conflicts with Concepcion which found that "[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration." Concepcion, 131 S. Ct. at 1748. Sutherland also conflicts with the UUAA which states that "[t]he court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation." Utah Code Ann. § 78B-11-111(3). The Agreements here prohibit class arbitration. The Court will not disturb the agreement between the parties and finds the Prohibition enforceable.

Accordingly, the Court finds Plaintiffs' claims subject to arbitration under the UUAA.

D. Stay of Proceedings

The Court "order[s] the parties to arbitrate." If the Court orders arbitration, "the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration." Utah Code Ann. § 78B-11-109(7). Accordingly, the Court stays the proceedings pending arbitration of all claims.

IV. CONCLUSION

For the aforementioned reasons, the Court GRANTS Defendant's Motion to Compel Arbitration, and GRANTS the Motion to Stay Action. The Court DENIES the Motion to Dismiss.

IT IS SO ORDERED.