UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LORRAINE FLORES, on behalf of herself and those similarly situated,

Plaintiffs,

v.

SWIFT TRANSPORATION COMPANY, SWIFT TRANSPORTATION CO. OF ARIZONA, LLC, SWIFT TRANSPORTATION SERVICES, LLC, and DOES 1-10, inclusive,

Defendants.

Case No. CV 14-02900 AB (Ex)

ORDER GRANTING THE MOTION TO COMPEL INDIVIDUAL ARBITRATION

Pending before the Court is a Motion to Compel Individual Arbitration filed by Defendants, Swift Transportation Company, on August 29, 2014. (Dkt. No. 41.) Plaintiffs, Lorraine Flores, Betty Miller, Barbresha Holmes, Gwendolyn Cecil, Eleanor Raiford, and those similarly situated, filed an Opposition on September 15, 2014. (Dkt. No. 56.) Defendants filed a Reply on September 22, 2014. (Dkt. No. 57.) For the reasons discussed below, the Court **GRANTS** the Motion to Compel

Individual Arbitration. The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. The October 6, 2014 hearing is vacated.[1]

I. BACKGROUND

Defendants operate an interstate shipping corporation that engages in the shipping of goods and products to different customers around the country. (Dkt. Nos. 41, 56.) Defendants' company also includes a number of customer representative service branches throughout the country where Plaintiffs have been employed. (Dkt. No. 56.)

Before beginning their employment as customer service representatives for Defendants, four (4) Plaintiffs (Betty Miller, Barbresha Holmes, Gwendolyn Cecil, and Eleanor Raiford) were required to sign Arbitration Agreements before they could begin working. (Dkt. No. 56.) Each of the four individual Plaintiffs signed an Arbitration Agreement that purports to arbitrate any claims and controversies arising out of or relating to Plaintiffs' employment with Defendants. (Dkt. No. 41, Ex. A-D.)

The Arbitration Agreement formulated by Defendants comes in four (4) formats that include various changes. (Dkt. No. 57, Ex. A-D.) There is a 2002 Arbitration Agreement to which Plaintiff Gwendolyn Cecil ("Plaintiff Cecil") signed on February

[1] Plaintiffs have filed an application to consolidate hearing dates with the Motion before the Court and the hearing to rule on the Motion for Class Certification. (Dkt. No. 59.) Due to the hearing for this matter being vacated as well as the consolidation application being stricken, the Court need not consolidate both Motion hearings. (Dkt. No. 62.) Furthermore, any arguments supporting and opposing the consolidation of hearings or the continuing of this hearing are not addressed herein.

7, 2002. (Dkt. No. 41, Ex. C; Dkt. No. 57, Ex. A.) There is a 2004 Arbitration Agreement to which Plaintiff Betty Miller ("Plaintiff Miller") signed on August 23, 2010. (Dkt. No. 41, Ex. B; Dkt. No. 57, Ex. B.) There is a 2005 Arbitration Agreement to which Plaintiff Barbresha Holmes ("Plaintiff Holmes") signed on October 29, 2010 and Plaintiff Eleanor Raiford ("Plaintiff Raiford") signed on July 27, 2007. (Dkt. No. 41, Exs. A, D; Dkt. No. 57, Ex. C.) Lastly, there is a 2006 Arbitration Agreement to which none of the Plaintiffs have signed. (Dkt. No. 57, Ex. D.)

On April 15, 2014, Plaintiffs filed a class action complaint alleging unpaid overtime wages under the Fair Labor Standards Act ("FLSA"). (Dkt. No. 1.) A hearing regarding Plaintiff's Motion for Class Certification is set to be heard before this Court on October 27, 2014. (Dkt. No. 43.)

Defendants have filed a Motion to Compel Individual Arbitration with regard to Plaintiffs (Plaintiff Miller, Plaintiff Holmes, Plaintiff Cecil, and Plaintiff Raiford) who are part of the class action complaint. (Dkt. No. 41.) The Opposition regarding the Motion to Compel Individual Arbitration was filed on September 15, 2014. (Dkt. No. 56.) Defendants filed a Reply on September 22, 2014. (Dkt. No. 57.)

II. LEGAL STANDARD

There is no dispute that the four Plaintiffs in question have signed the

Arbitration Agreements formulated by Defendants.[2] (Dkt. No. 41, Ex. A-D.) Defendants assert that the agreements are governed under the Federal Arbitration Act ("FAA"), and Plaintiffs do not contest that assertion. (Dkt. No. 57.)

A. Federal Arbitration Act

"The FAA provides for the enforcement of private agreements to arbitrate disputes." *Kilgore v. KeyBank, Nat. Ass'n*, 673 F.3d 947, 955 (9th Cir. 2012). When an enforceable FAA Arbitration Agreement covers employment disputes, the FAA promotes a "liberal federal policy" that encourages courts to compel arbitration. *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1745 (2011) (citing *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983)). "Under the FAA, a party to an arbitration agreement may petition a [U.S.] district court for an order directing 'arbitration proceed in the manner provided for in such agreement.'" *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*, 559 U.S. 662, 682, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010). When parties contract to resolve their disputes through arbitration, the Court must compel the parties to arbitrate their claims. *Morvant v. P.F. Chang's Cina Bistro*, Inc., 870 F.Supp.2d 831 (C.D. Cal. 2012) (citing *Dean Witter Reynolds, Inc. v. Bryd*, 470 U.S. 213, 218, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985)).

As noted by the 9th Circuit, the district court's role in reviewing the enforceability of Arbitration Agreements involve determining whether a valid

[2] Seeing no challenge, the Court takes judicial notice of the Arbitration Agreements in question.

Arbitration Agreement exists and whether the claims in dispute are encompassed within the Arbitration Agreement. *Lifescan, Inc. v. Premier Diabetic Services, Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004) (citing *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). If there are no grounds to invalidate the Arbitration Agreement, the Court will enforce the agreement. *Id*.

In bringing this Motion to Compel Individual Arbitration, Defendants states that Plaintiffs in question have signed the mandatory Arbitration Agreements that explicitly require arbitration for employment related disputes. (Dkt. No. 41.) Defendants also argue that all the Arbitration Agreements are valid and enforceable under the FAA. *Id*.

Plaintiffs oppose the Motion to Compel Individual Arbitration claiming that, in the interest of efficiency, the Court should rule on the Plaintiffs' Motion for Conditional Certification before ruling on the Motion to Compel Individual Arbitration. (Dkt. No. 56.) Their arguments suggest that the Arbitration Agreements in question do not compel individualized arbitration resolutions in the cases of FLSA collective action disputes. *Id*. at pp. 9-18. Instead of the individualized arbitration proceeding, Plaintiffs seek for the Court to compel arbitration in a collective proceeding. *Id*.

III. DISCUSSION

The parties are not in disagreement as to the validity of the Arbitration

Agreements formulated by Defendants.[3] However, its enforceability of the Arbitration Agreements is the issue both parties disagree on. (Dkt. Nos. 56, 57.) According to Plaintiffs, the Arbitration Agreements in question are silent as to the prohibition of collective arbitration proceedings, which denotes an ambiguity in their favor for multiparty dispute resolutions. (Dkt. No. 56, pp. 17.) Defendants note that the language within the Arbitration Agreements implicitly prohibits collection actions within its class waiver provisions, and even if the agreement is silent on the issue, the Court should not construe the Arbitration Agreements against Defendants. (Dkt. No. 57, pp. 8 at ¶ 3.)

A. Class Action under the Federal Rules of Civil Procedure and Collective Action under the Fair Labor Standards Act

When one or more members of class sue as representative parties on behalf of all members then a class action is instituted.[4] Fed. R. Civ. P. 23. Normally when a verdict is rendered on behalf of the class action, any class member who decides not to opt out of the class is bound by that judgment. *Cilluffo v. Central Refrigerated Services, Inc.*, No. EDCV 12-00886 VAP, 2012 WL 8539805 (C.D. Cal. 2012) (internal citations omitted).

The FLSA provides a legal remedy against employers who fail to meet the

[3] The validity and applicability of the Arbitration Agreements are not questioned by the parties. Therefore, the unconscionability arguments cited by Defendants will not be addressed herein.

[4] Class actions also require a number of other procedural applications that need to be supplemented in order for the class to be certified in bringing forth a class action. Fed. R. Civ. P. 23.

standards of the labor force, and in this case, a failure to pay for overtime hours. 29 U.S.C. § 201 (2006). Regarding multiparty proceedings, the FLSA differs from the Federal Rules of Civil Procedure ("FRCP") with respect to opt in plaintiffs and opt out plaintiffs. *Id*. at § 216(b). As previously noted, the FRCP requires members of a class to opt out of a class in order to not be bound by a judgment. *Cilluffo*, 2012 WL 8539805. The FLSA requires members to opt in for their claims to be adjudicated collectively with other members. 29 U.S.C. § 216(b) (2006) ("No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.").

According to Plaintiffs, this distinction between the FRCP and the FLSA in its handling of multiparty proceedings provides grounds for the Plaintiffs to proceed to arbitration collectively versus individually. (Dkt. No. 56.) Plaintiffs point the Court's attention to the language of the Arbitration agreements in question, and Plaintiffs highlight the fact that none of the agreements signed by Plaintiffs clearly waive collective actions. *Id*. at pp. 17.

Defendants proclaim, whether implicitly or otherwise, that the Arbitration Agreements prohibit multiparty arbitration proceedings based on Supreme Court precedent. Defendants rely on *Stolt-Nielsen*, which articulates a standard that supports following the terms of an Arbitration Agreement and to refrain from inferring class arbitration when an agreement is silent to such proceedings. *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*, 559 U.S. 662, 130 S.Ct. 1758, 176 L.Ed.2d 605

(2010). *Concepcion* followed a similar analysis in concluding that the intent behind the terms of Arbitration Agreement control the manner in which arbitration will be conducted. *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011). The Court is inclined to agree with Defendants.

B. The Arbitration Agreement Does Not Authorize Collective Action Arbitration

The Supreme Court in *Stolt-Nielsen* particularly addressed class arbitration stating that Arbitration Agreements should be enforced according to their terms in light of FAA policy. *Stolt-Nielsen*, 559 U.S. at 682 (emphasizing that the FAA promotes the enforcement of individual Arbitration Agreements are silent as to parties arbitrating together). Class arbitrations are "no longer single disputes between parties to a single agreement, but instead resolves many disputes." *Id*. at 686. *Stolt-Nielsen* involved an Arbitration Agreement that was silent regarding class arbitration. *Id*. The Court emphasized the expectations between the parties based on the silent term and what the language of the agreement actually stated. *Id*. at 687 ("…emphasizing the consensual basis of arbitration, we see the question as being whether the parties agreed to authorize class arbitration."). The Court held that when there is no language or agreement that allows class arbitration, the Arbitration Agreement cannot be presumed to allow class proceedings. *Id*.

In the instant matter, this Court must focus on the disputed Arbitration Agreements:

Plaintiff Cecil signed a 2002 Arbitration Agreement that is silent in reference to class waivers. (Dkt. No. 41, Ex. C.)

Plaintiff Miller signed a 2004 Arbitration Agreement that states, "[t]he parties specifically agree that no dispute may be joined with the dispute of another and agree that class actions under this arbitration agreement are prohibited." (Dkt. No. 41, Ex. B, pp. 12 ¶ 4.)

Plaintiff Holmes and Plaintiff Raiford signed a 2005 Arbitration Agreement that states, "[t]he parties specifically agree that no dispute may be joined with the dispute of another and agree that class actions under this arbitration agreement are prohibited." (Dkt. No. 41, Ex. A, pp. 7 ¶ 4, Ex. D, pp. 22 ¶ 4.)[5]

The Court notes, as Plaintiffs have cited to, that none of the Arbitration Agreements signed by Plaintiffs unambiguously prohibit collective actions, except for the 2006 Arbitration Agreement to which none of the Plaintiffs signed. (Dkt. No. 41, Exs. A-D.) However, none of the Arbitration Agreements authorize collective actions either. Collective actions and class actions have more similarities than differences. *Concepcion*, 131 S.Ct. 1740 (In holding the enforceability of class waivers, the Court continued to use both "class action" and "collective action" interchangeably.). The language of the Arbitration Agreements state, "[t]he parties specifically agree that no dispute may be joined with the dispute of another and agree that class actions under this Arbitration Agreement are prohibited." (Dkt. No. 41, Exs. A, B, D.) Thus, actions, collective or class, that follow multiparty proceedings are contrary to the

[5] Defendants have also generated a 2006 Arbitration Agreement, to which none of Plaintiffs have signed, that states, "[n]either party to this agreement will have the right to participate in a class, representative or collective action, as a class representative, class member or an opt-in party, acts as a private attorney general, or joins or consolidates claims of any other person or entity." (Dkt. No. 57, Ex. D.)

agreements' intent and expectations, specifically the 2004 and 2005 agreements. *Id*.

Within its class waiver provisions, the language of the 2004 and 2005 agreements provide that "…no dispute may be joined with another…" *Id*. The intent and expectation behind these specific agreements appear clear to the Court that an employee cannot join his or her dispute with another employee. The Arbitration Agreements were signed by Plaintiffs Miller, Holmes, and Raiford and Defendants thereby agreeing to its terms.

In reference to the absence of class waivers within Plaintiff Cecil's agreement, this Court cannot presume the parties agreed to multiparty arbitration proceedings without some consensual basis. *Concepcion*, 131 S.Ct. 1740 (concluding that collective arbitration is contrary to the FAA, and without a clear consensual agreement to multiparty actions, the parties must proceed individually); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 910 (9th Cir. 2011) ("…unless the parties explicitly agreed to class arbitration, arbitrations could only proceed on an individual basis."); *Morvant v. P.F. Chang's Cina Bistro*, Inc., 870 F.Supp.2d 831 (C.D. Cal. 2012) ("…the Court may not compel a party to comply with the terms of an [arbitration] agreement to which he or she never agreed."). The differences between individual arbitration and multiparty arbitration proceedings "are too great… to presume that parties' mere silence on the issue…constitutes consent to resolve their disputes in class proceedings." *Stolt-Nielsen*, 559 U.S. at 687.

IV. CONCLUSION

Based on the above, Defendants' Motion to Compel Individual Arbitration is **GRANTED**. The Plaintiffs in question will hereby proceed with their disputes through arbitration individually.

IT IS SO ORDERED.

Dated: October 3, 2014

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE