

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-20314-CIV-GAYLES/OTAZO-REYES

FARHOD KARIMOV, NASIBA  
JUMAEVA, UGILOY JUMAEVA, AND  
ZARIF KHURSANDOV,

Plaintiffs,

v.

OBK CENTER CORP d/b/a Bahor Restaurant,  
a Florida Corporation, and IRINA ELIUTINA,  
individually,

Defendants.

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**REPORT AND RECOMMENDATION**

THIS CAUSE came before the Court upon Defendants OBK Center Corporation and Irina Eliutina's ("Defendants") Motion to Dismiss or Stay Proceedings and to Compel Arbitration (hereafter, "Motion to Dismiss" and "Motion to Stay") [D.E. 16]. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636 by the Honorable Darrin P. Gayles, United States District Judge [D.E. 23]. The undersigned held a hearing on this matter on May 26, 2017.

Plaintiffs argue that Defendants have waived their right to compel arbitration by participating in this litigation. See Response [D.E. 26]. However, the only activity in which Defendants have engaged is participating in mediation, which does not rise to the level of waiver. See Ivax Corp. v. B. Braun of Am., Inc., 286 F.3d 1309, 1316 (11th Cir. 2002) ("[W]aiver occurs when a party seeking arbitration substantially participates in litigation to a point inconsistent with an intent to arbitrate." (citation omitted)). To ensure that Plaintiffs' FLSA rights are preserved, the undersigned recommends a stay of the case rather than dismissal. Therefore, it is

RESPECTFULLY RECOMMENDED that Defendants' Motion to Dismiss be DENIED, Defendants' Motion to Stay be GRANTED and the parties be DIRECTED to proceed to arbitration.<sup>1</sup>

Pursuant to Local Magistrate Judge Rule 4(b), the parties have **fourteen days** from the date of this Report and Recommendation to file written objections, if any, with the Honorable Darrin P. Gayles. Failure to timely file objections shall bar the parties from attacking on appeal the factual findings contained herein. See Resolution Tr. Corp. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993). Further, "failure to object in accordance with the provisions of [28 U.S.C.] § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions." See 11th Cir. R. 3-1 (I.O.P. - 3).

RESPECTFULLY SUBMITTED in Miami, Florida this 26<sup>th</sup> day of May, 2017.



ALICIA M. OTAZO-REYES  
UNITED STATES MAGISTRATE JUDGE

cc: United States District Judge Darrin P. Gayles  
Counsel of Record

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<sup>1</sup> Plaintiffs requested reimbursement of their mediation fees in their Response. However, that request is DENIED.