IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANDREW MEDINA,	§	No. 5:17–CV–906–DAE
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
BFI WASTE SERVICES OF TEXAS, LP,	§	
	§	
	§	
Defendant.	§	
	§	

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISSING CASE WITHOUT PREJUDICE

The matter before the Court is Defendant BFI Waste Services of Texas LP's ("BFI" or "Defendant") Motion to Compel Arbitration and Stay Proceedings. (Dkt. # 6.) Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration of the memorandum filed in support of the motion, the Court, for the reasons that follow, **GRANTS** Defendant's Motion to Compel Arbitration and **DISMISSES** the case.

BACKGROUND

Plaintiff Andrew Medina ("Plaintiff" or "Medina") was hired to work at BFI as a waste collector. (Dkt. # 1-1 ¶¶ 8–9.) On February 8, 2016, Plaintiff executed an Arbitration Agreement (the "Agreement"), which BFI contends was a condition of Plaintiff's employment. (Dkt. # 6-2, Ex. A-1 ¶¶ 2–4; Dkt. # 6 ¶ 5.)

Plaintiff alleges that while he was performing his duties on April 20, 2016, he sustained an injury because BFI failed to provide him with the necessary equipment to collect heavy debris. (Dkt. # 1-1 ¶ 9.) Additionally, Plaintiff alleges that Defendant failed to provide him "with proper supervision and/or instrumentalities to safely perform his waste collecting duties." (Id. ¶ 10.)

On August 8, 2017, Plaintiff sued Defendant in the 408th Judicial District Court of Bexar County, Texas, for negligence. (Id.) On September 15, 2017, Defendant removed the case to this Court pursuant to this Court's diversity jurisdiction. (Dkt. # 1.) On February 8, 2018, BFI filed the instant Motion to Compel Arbitration, arguing that Plaintiff is required to submit his claims to binding arbitration in accordance with the arbitration clause contained in the Agreement. (Dkt. # 6.) Plaintiff did not file a response to the motion, and the time to respond under the Local Rules has expired.

LEGAL STANDARD

Under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., "[a] written provision in . . . a contract to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA "expresses a strong national policy favoring arbitration of disputes, and all doubts concerning the arbitrability of claims should be resolved in

favor of arbitration." Primerica Life Ins. Co. v. Brown, 304 F.3d 469, 471 (5th Cir. 2002).

The Fifth Circuit employs a two-step analysis to determine whether the parties have agreed to arbitrate a dispute. Sherer v. Green Tree Servicing LLC, 548 F.3d 379, 381 (5th Cir. 2008). First, a court must ask if the parties agreed to arbitrate the dispute. Webb v. Instacorp., Inc., 89 F.3d 252, 258 (5th Cir. 1996). This determination requires consideration of whether a valid agreement to arbitrate exists among the parties and whether the dispute is within the scope of the arbitration agreement. Id. In making this determination, courts should generally apply "ordinary state-law principles that govern the formation of contracts," but must give due regard to the federal policy favoring arbitration and resolve any ambiguities as to the scope of the arbitration clause itself in favor of arbitration. Id. Once a court determines that the parties agreed to arbitrate, the court must assess whether any legal restraints external to the agreement foreclose arbitration of the dispute. OPE Int'l L.P. v. Chet Morrison Contractors, Inc., 258 F.3d 443, 445–46 (5th Cir. 2001).

DISCUSSION

The Court finds that the first step of the inquiry is met—a valid arbitration agreement exists between Plaintiff and BFI, and Plaintiff's negligence claims fall within the scope of the Agreement. Plaintiff and BFI entered into a

valid agreement to arbitrate on February 8, 2016. (Dkt. # 6-2, Ex. A-1.) The Agreement between Plaintiff and BFI states that "[i]t is a condition of each employee's employment with the Employer that the Employee agree to arbitrate all arbitrable claims arising from or related to any Accident causing Injury to the Employee." (Id.) The Agreement further states that arbitration is mandatory, binding, and mutual, and "that [the Employee] and Employer both waive all rights to a jury or non-jury trial in state or federal court for any Claim." (Id. ¶ 2.) Claims covered by the Agreement include "claims arising with Employee's Scope of Employment against Employer . . . including claims for negligence or gross negligence, and all claims for personal injury, physical impairment, disfigurement, pain and suffering, mental anguish, . . . unsafe workplace, negligent hiring, failure to supervise, failure to train . . . and exemplary or punitive damages if allowed." (Id. ¶ 4.) Plaintiff signed the Agreement on February 8, 2016, and the claim arose on April 20, 2016. (Id.; Dkt. # 1-1.)

In addition to the Agreement, Defendant attached to its Motion the affidavit of Cindy Duggan, the Payroll Processor for BFI. See Rodgers-Glass v. Conroe Hosp. Corp., No. H-14-3300, 2015 WL 4190598, at *5 (S.D. Tex. July 10, 2015) ("A party may prove the existence and execution of the arbitration agreement by attaching to its motion to compel an affidavit proving up the agreement and stating that the nonmovant entered into the agreement."). Duggan's

affidavit states that she conducted Plaintiff's new employee orientation and presented Plaintiff with the Agreement. (Dkt. # 6-1, Ex. A ¶¶ 7–8.) Duggan further states that Plaintiff acknowledged receipt and understanding of the Agreement, and agreed to the terms of the Agreement by signing the Agreement. (Id. ¶ 8.) Based on the foregoing, the Court finds that a valid arbitration agreement exists, and that Plaintiff's claims fall clearly within the scope of the Agreement.

Since the Court has determined that the parties agreed to arbitrate, the next step of the inquiry considers whether any legal constraints exist external to the Agreement that would render the arbitration provision unenforceable. OPE Int'l L.P., 258 F.3d at 445–46. These constraints may include unconscionability, duress, fraudulent inducement, revocation, and other defenses to contract formation. Rodgers-Glass, 2015 WL 4190598 at *8. Plaintiff did not respond to Defendant's Motion to Compel Arbitration, and the Court's review of the record does not indicate that any obvious legal constraints exist. Therefore, arbitration should be compelled in this case.

The FAA provides that when a court properly and mandatorily refers claims to arbitration it shall stay the case until arbitration is complete. 9 U.S.C. § 3. However, "[t]he weight of authority clearly supports dismissal of the case [as opposed to staying the suit] when all of the issues raised in the district court must be submitted to arbitration." Rodgers-Glass, 2015 WL 4190598 at 8 (quoting

Alford v. Dean Witter Reynolds, Inc., 975 F.2d 1161, 1164 (5th Cir. 1992)). In this case, all of Plaintiff's claims are subject to mandatory arbitration. The Court therefore chooses dismissal as the appropriate procedure.

CONCLUSION

Based on the foregoing, the Court **GRANTS** Defendant's Motion to Compel Arbitration (Dkt. # 6), and **DISMISSES** the case **WITHOUT PREJUDICE** so Plaintiff may pursue the case in arbitration in accordance with the terms of the arbitration agreement. The Clerk is instructed to close the case.

IT IS SO ORDERED.

DATED: San Antonio, Texas, February 23, 2018.

DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE