

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MAXIMILIANO DIAZ PEREZ, LORENZO
SUAR PANJOJ, MARIA LUCRECIA
TZAMPOP GOMEZ, YOHANGLY MISHHELL
GARCIA MENDEZ AND MAILY ADRIANA
VELASQUEZ MORALES,

Plaintiffs,

v.

MARDER TRAWLING, INC., FRANCISCO
IXCOTOYAC DIONICIO, INDIVIDUALLY, AND
WORKFORCE UNLIMITED INC. AND
ANDREW WILKE, INDIVIDUALLY,

Defendants.

Dkt. No: 1:25:cv-13129-LTS

**DEFENDANT MARDER TRAWLING, INC.’S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO COMPEL INDIVIDUAL ARBITRATION AS TO
PLAINTIFFS LORENZO SUAR PANJOJ, MARIA LUCRECIA TZAMPOP GOMEZ,
YOHANGLY MISHHELL GARCIA MENDEZ AND MAILY ADRIANA VELASQUEZ
MORALES AND STAY LITIGATION**

Defendant Marder Trawling, Inc. (“Marder”) respectfully moves this Court, pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, *et seq.*, for an Order compelling arbitration as to Plaintiffs Lorenzo Suar Panjoj, Maria Lucrecia Tzampop Gomez, Yohangly Mishell Garcia Mendez, and Maily Adriana Velasquez Morales (collectively referred to as the “Workforce Plaintiffs”) and staying this litigation.¹

¹ On January 20, 2026, counsel for Plaintiffs filed nineteen (19) “Notice(s) of Consent to be a Party Plaintiff in a Collective Action Under the Fair Labor Standards Act” (“Notices”). *See* Dkt. 28 – 43. Upon information and belief, all but two (2) of the individuals who filed these Notices are Workforce employees assigned to work at Marder’s New Bedford facility. To the extent this Court deems the nineteen (19) individuals who filed the Notices to be party plaintiffs to this lawsuit, and to the extent any of those individuals signed the same Arbitration Agreement with Workforce identified herein that covers the claims asserted in this lawsuit, Marder requests this Court issue an order compelling arbitration and staying litigation as to those individuals.

The Workforce Plaintiffs filed this class action lawsuit alleging violations of federal and state wage and hour laws arising from what the Workforce Plaintiffs have described as their joint employment relationship between their staffing agency employer, Defendant Workforce Unlimited Inc. (“Workforce”), and their Worksite Employer, Marder. Plaintiffs have asserted claims against all Defendants under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) (Count I), M.G.L. c. 149 §§ 148 (“MA Wage Act”) (Counts II – V, VII, VIII), M.G.L. c. 159C(d) (“MA Temporary Workers Right to Know Law,” hereinafter referred to as “MA TWRTK Law”) (Count VI, Count IX), and M.G.L. c. 151 § 1.1 *et seq.* (“MA Minimum Wage Law”) (Count II).

As set forth herein, the claims asserted by the Workforce Plaintiffs in their Complaint are subject to the Dispute Resolution Program and Mutual Agreement to Arbitrate (“Arbitration Agreement”) that each Workforce Plaintiff executed during their onboarding process with Workforce. Plaintiffs expressly agreed to arbitrate any and all disputes arising out of or related to their employment or other association with Workforce and/or their Worksite Employer. As asserted by the Workforce Plaintiffs in their Complaint, Marder at all times relevant acted as their Worksite Employer. Because this class action lawsuit is entirely derived from the Workforce Plaintiffs’ employment with Workforce and employment relationship with Marder as their Worksite Employer, their claims are subject to arbitration.

As such, Marder respectfully requests this Court issue an order compelling the Workforce Plaintiffs to individually submit their claims to binding arbitration in accordance with their Arbitration Agreements and stay the instant litigation as to Marder.

BACKGROUND

I. Factual Allegations Set Forth in Plaintiffs' Complaint.²

Marder operates a seafood processing plant located in New Bedford, Massachusetts. See Complaint, Dkt. 1, at ¶ 17. Workforce is a staffing agency that assigns its employees to Worksite Employers, including Marder. See id. at ¶¶ 16(c), 16(e). The Workforce Plaintiffs allege that during the relevant period, Marder contracted with Workforce for workers employed jointly by Workforce and Marder at Marder's New Bedford seafood processing facility. See id. at ¶ 19.³ The Workforce Plaintiffs allege Marder is their "joint employer" under the FLSA, the MA Wage Act and the MA Fair Minimum Wage Law, and their "work site" employer under the MA TWRTK Law. See id. at ¶ 13(g) and (h).

The Workforce Plaintiffs allege the following actions by Defendants constitute violations of state and federal wage and hour laws:

- Defendant Francisco Ixotoyac ("Ixotoyac"), a Marder employee, recruited workers to work at Marder and had an arrangement whereby Workforce and Defendant Andrew Wilkes ("Wilkes") would assign workers to Marder. See id. at ¶ 27.
- During the relevant period, Workforce Plaintiffs who lived in Rhode Island were required to take transportation to Marder's New Bedford, MA facility "arranged by Defendants as a condition of employment and were charged approximately \$60 per week (or \$12 per day), for such transportation." See id. at ¶ 30. The Workforce Plaintiffs describe the

² The Complaint contains numerous inaccuracies and incorrect allegations. Marder denies any harm to Plaintiffs, denies any liability, and disputes damages. Marder does not waive and expressly reserves the right to dispute all allegations in the Complaint and assert defenses in the proper forum.

³ Plaintiff Lorenzo Suar Panjoj alleges he has been employed by Workforce and assigned to work for Marder from January 2020 – present. See Complaint, Dkt. No. 1, at ¶ 9(c). Plaintiff Maria Lucrecia Tzampop Gomez alleges she has been employed by Workforce and assigned to work for Marder from March 2023 – present. See id. at ¶ 10(c). Plaintiff Yohangly Mishell Garcia Mendez alleges she has been employed by Workforce and assigned to work for Marder from March 2024 – present. See id. at ¶ 11(c). Plaintiff Maily Adriana Velasquez alleges she has been employed by Workforce and assigned to work for Marder from November 2023 – present. See id. at ¶ 12(c).

transportation charge as an “Excessive Ride Charge Deduction” in their pay. See id. at ¶ 48.

- Ixcotoyac set and controlled the Workforce Plaintiffs’ hourly wage rate at or near the minimum wage permitted in Massachusetts. See id. at ¶ 33. Marder and Workforce were aware or should have been aware that Mr. Ixcotoyac was setting and controlling their hourly rate that allowed payment to them at or near the minimum wage rate. See id. at ¶ 34.
- Ixcotoyac supplemented his salary by deducting direct cash payments from the Workforce Plaintiffs’ wages in the amount of approximately \$100 per week, allegedly paid to Defendants as a condition of the Workforce Plaintiffs’ employment. See id. at ¶ 42. The Workforce Plaintiffs describe the approximately \$100 weekly deduction in their wages as an “Extorted Kickback Deduction.” See id. at ¶¶ 36, 39, 41, 42.
- The Workforce Plaintiffs worked in excess of forty (40) hours per week but were not paid time and one half their regular hourly wage as a result of the “Extorted Kickback Deduction paid to Defendants as a condition of employment.” See id. at ¶ 41.
- As a result of the “Extorted Kickback Deductions” and/or “Excessive Ride Charge Deductions,” the Workforce Plaintiffs’ hourly wage rate fell below the applicable Massachusetts minimum wage rate. See id. at ¶ 48.
- Defendants Workforce and Wilkes did not provide the Workforce Plaintiffs with check stubs showing an accounting of deductions made, did not provide notices of the fees charged to them for transportation, and did not provide notices containing information about their rights under the MA TWRTK Law. See id. at ¶¶ 52-54.

II. Plaintiffs' Arbitration Agreements.

As part of Workforce's onboarding process, all prospective employees are required to execute Workforce's Dispute Resolution Program and Mutual Agreement to Arbitrate ("Arbitration Agreement"). See Dkt. 49, Exhibit 1, Affidavit of Ana Sanchez.⁴ Each of the Workforce Plaintiffs executed the Arbitration Agreement. See id., Exhibit 1, ¶¶ 20 – 33; Attachments C-H.⁵ The Arbitration Agreement signed by the Workforce Plaintiffs states in pertinent part:

By accepting or continuing employment with Workforce, EMPLOYEE agrees, as a condition of employment, to waive the right to pursue covered claims in Court against Workforce *and Worksite Employer* and to accept an Arbitrator's award as the final, binding, and exclusive determination of all covered claims.

Id., Attachment A, at p.1 (emphasis added).⁶ The Arbitration Agreement also describes the claims that fall within the scope of the Arbitration Agreement:

The EMPLOYEE and Workforce agree to use this Dispute Resolution and Mutual Agreement to Arbitrate (the "Agreement"), including binding arbitration, *to resolve any and all claims, controversies or disputes* between EMPLOYEE, Workforce and/or *Worksite Employer that arise from, relate to, or have any occasion whatsoever with Employee's employment or other association with Workforce, including assignment to work at a Worksite Employer facility*, including seeking or obtaining employment with, employment by, termination of the employment relationship or compensation, whether arising prior to or after this Agreement, except as otherwise provided in the Agreement. This means EMPLOYEE and Workforce, agree to use the Agreement *to resolve all claims for which a court would be authorized to grant relief and in any way arising out of or relating to EMPLOYEE'S employment with Workforce, or assignments to work at a Worksite Employer*, except claims excluded from this Agreement.

⁴ Defendants Workforce and Andrew Wilkes also moved to compel arbitration for the Workforce Plaintiffs. See Dkt. 48, 49. In support of their Motion to Compel, Defendants Workforce and Wilkes submitted the affidavit of Workforce's Human Resources Director, Ana Sanchez. See Dkt. 49, Exhibit 1. Ms. Sanchez's affidavit explains Workforce's practices related to providing the Arbitration Agreement to prospective employees, including the Workforce Plaintiffs, in both the English and Spanish language. See id. at ¶ 8.

⁵ Workforce Plaintiffs Lorenzo Suar Panjoj and Maily Adriana Velasquez signed the Arbitration Agreement twice. See Sanchez Aff. ¶¶ 20-24, 29-33.

⁶ The Spanish language of the quoted portions of the Arbitration Agreement is not included in the body of this Memorandum. The Spanish language translation of the quoted portions of the Arbitration Agreement can be found at Dkt. 49, Exhibit 1, Sanchez Aff., Attachment B.

Id., Attachment A, at p. 1 (emphasis added).

The Arbitration Agreement also contains a subsection, in bold typeface, labeled, “**Class Action Waiver**,” which states:

All claims subject to arbitration under the Agreement *must be brought solely in the EMPLOYEE’S individual capacity*, and not as a plaintiff, claimant, representative, class representative or class member, in a purported class, collective, or multi-party action or proceeding. To this end, EMPLOYEE *agrees to waive any right to seek class certification for any and all claims against EMPLOYER, and further agrees not to participate in any and all class action lawsuits against EMPLOYER* with regard to any and all matters herein.

Id., Attachment A, at p. 3 (emphasis added).

Although each of the Workforce Plaintiffs signed the Arbitration Agreement, on October 24, 2025, the Workforce Plaintiffs filed a Class Action Complaint asserting causes of action against Workforce, Marder, Ixcotoyac and Wilkes under the FLSA (Count I), MA Wage Act (Counts II – V, VII, VIII), MA TWRTK Law (Count VI, Count IX), and MA Minimum Wage Law (Count II). Each of these arise from and relate to the Workforce Plaintiffs’ employment or other association with Workforce as their employer, and Marder as their Worksite Employer. Per the plain language of the Arbitration Agreement, all claims asserted in the present action are subject to arbitration.

LEGAL ARGUMENT

I. The Workforce Plaintiffs’ Claims are Subject to Arbitration.

Under the Federal Arbitration Act (FAA), “[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 as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. This section of the FAA “reflects a liberal federal policy favoring arbitration... and the fundamental principle that arbitration is a matter of contract.” AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011) (internal quotation marks omitted). As

such, the Supreme Court has noted courts must “rigorously enforce arbitration agreements according to their terms.” Am Express Co. v. Italian Colors Rest., 570 U.S. 228, 233 (2013) (internal quotation omitted).

The party seeking to compel arbitration bears the burden of proving that “(1) a valid arbitration agreement exists, (2) the movant is entitled to invoke the agreement, (3) the non-moving party is bound by the agreement, and (4) the asserted claim(s) fall(s) within the agreement's scope.” Steel-Rogers v. Glob. Life Sci. Sols. USA, LLC, 624 F. Supp. 3d 10, 14 (D. Mass. 2022) (citing InterGen N.V. Grina, 344 F.3d 134, 142 (1st Cir. 2003)). Marder will address each of these four factors in turn, which demonstrate that the Workforce Plaintiffs’ claims against Marder are arbitrable.

1. A Valid Arbitration Agreement Exists.

The Workforce Plaintiffs executed valid Arbitration Agreements. To determine whether a valid agreement to arbitrate exists between the parties, courts “apply ordinary state-law principles that govern the formation of contracts.” Cullinane v. Uber Techs., Inc., 893 F.3d 53, 61 (1st Cir. 2018) (internal citations omitted). Under Massachusetts law, a valid agreement is formed when the terms of the agreement “have been reasonably communicated and accepted and if, considering all the circumstances, it is reasonable to enforce [the agreement].” Ajemian v. Yahoo!, Inc., 83 Mass. App. Ct. 565, 573-74 (2013). Stated another way, “the formation of a contract requires a definite offer, acceptance, and consideration.” United States ex rel. Hagerty v. Cyberonics, Inc., 146 F. Supp. 3d 337, 346 (D. Mass. 2015).

i. The Workforce Plaintiffs Received Reasonable Notice of the Terms of the Arbitration Agreements.

Marder need only show “some minimal notice to the employee that the statutory claims are subject to arbitration.” Ellerbee v. GameStop, Inc., 604 F. Supp. 2d 349, 354 (D. Mass. 2009)

(internal quotation marks omitted). “This is an objective test: the sufficiency of the notice turns on whether, under the totality of the circumstances, the employer’s communication would have provided a reasonably prudent employee notice of the waiver [of the right to proceed in a judicial forum].” Id. (internal quotation marks omitted).

Here, Workforce’s Director of Human Resources has attested that the Workforce Plaintiffs received a copy of the Arbitration Agreement in both the English language and the Spanish language, and they were provided as much time as they needed to review the document. See Dkt. 49, Exhibit 1, Sanchez Aff. at ¶¶ 8, 12. The Arbitration Agreement itself provides sufficient notice of its terms. The Arbitration Agreement states, under the bold and underlined title “**Mutual Agreement to Arbitrate**” or “**Acuerdo Mutuo de Arbitraje**,” that each of the Workforce Plaintiffs were agreeing to “waive the right to pursue covered claims in Court... and to accept an Arbitrator’s award as the final, binding, and exclusive determination of all covered claims.” Id., Attachment A, at p. 1. The Arbitration Agreement also states under the bolded heading “**Program Summary**” or “**Resumen del programa**,” that “any and all claims, controversies or disputes between EMPLOYEE and EMPLOYER that arise from, relate to, or have any connection whatsoever with EMPLOYEE’s employment or other association with EMPLOYER” are covered by the Arbitration Agreement. Id. Workforce’s Director of Human Resources has also attested that during the onboarding process, the Workforce Plaintiffs were informed that if they had questions about the Arbitration Agreement, she was available to go over its provisions with them as she is fluent in both the written and spoken Spanish language. See id. at ¶ 2, 11-14.

The language of the Arbitration Agreement and the circumstances surrounding the Workforce Plaintiffs’ review of the Arbitration Agreement were sufficient to place a reasonable person on notice that their employment-related claims would be subject to arbitration.

ii. The Workforce Plaintiffs Accepted the Terms of the Arbitration Agreements.

“When considering whether [an employee] assented to the terms of the... agreement, we consider the specific actions required to manifest assent.” Kauders v. Uber Technologies, Inc., 486 Mass. 557, 573-74 (2021). Where the solemnity of physically signing a written contract” exists, courts should not be concerned that employees do not understand the implications of their actions.” Id. at 574. Here, each of the Workforce Plaintiffs signed their written Arbitration Agreements. See Dkt. 49, Exhibit 1, Sanchez Aff. at ¶¶ 20 – 33; Attachments C – G. The Workforce Plaintiffs’ physical signatures on the Arbitration Agreements are clear evidence that the Workforce Plaintiffs manifested their assent to and accepted the terms of the Arbitration Agreement.

iii. Consideration is Satisfied, so it is Reasonable to Enforce the Arbitration Agreements.

“The requirement of consideration is satisfied if there is either a benefit to the promisor or a detriment to the promise.” Marine Contractors Co. v. Hurley, 365 Mass. 280, 286 (1974) (citing Williston, Contracts (3d ed.) § 102 (1957)). In the context of arbitration agreements, there is a reciprocal exchange of benefit and detriment where “[e]ach party waive[s] its right to judicial process and gain[s] the right to invoke arbitration.” Miller v. Cotter, 448 Mass. at 684, n. 16. Here, Workforce and the Workforce plaintiffs waived their rights to pursue employment claims in court and gained the right to invoke arbitration. Further, Workforce allowed the Workforce Plaintiffs to begin and continue employment with Workforce.

Based on the forgoing analysis of the factors required to form a valid agreement under Massachusetts law, this Court must find that Marder has met its burden to establish that a valid arbitration agreement exists for each Workforce Plaintiff.

2. Marder is Entitled to Invoke the Arbitration Agreement.

Marder acknowledges that it is not a signatory to the Arbitration Agreements between the Workforce Plaintiffs and Workforce. The First Circuit has noted “[a] non-signatory may be bound by or acquire rights under an arbitration agreement under ordinary state-law principles of agency or contract.” Grand Wireless, Inc. v. Verizon Wireless, Inc., 748 F.3d 1, 9–10 (1st Cir. 2014) (quoting Restoration Pres. Masonry, Inc. v. Grove Eur. Ltd., 325 F.3d 54, 62 n. 2 (1st Cir. 2003)). “Massachusetts has recognized six theories under which a non-signatory to a contract can enforce the contract’s terms against a signatory: ‘(1) incorporation by reference; (2) assumption; (3) agency; (4) veil piercing/alter ego; (5) equitable estoppel, and (6) third-party beneficiary.’” Steel-Rogers v. Glob. Life Sci. Sols. USA, LLC, 624 F. Supp. 3d 10, 14 (D. Mass. 2022) (quoting Landry v. Transworld Systems, Inc., 485 Mass. 334, 339 (2020)). Here, Marder can enforce the Arbitration Agreement under the theory of equitable estoppel and because it is a third-party beneficiary of the Arbitration Agreement.

i. Marder is an Intended Third-Party Beneficiary of the Arbitration Agreement.

The Workforce Plaintiffs’ Arbitration Agreements are enforceable as to Marder because Marder is an intended third-party beneficiary of the Arbitration Agreement. “The relevant question in determining whether a nonsignatory can enforce an arbitration agreement under a third-party-beneficiary theory is whether the signatories intended to ‘confer [on that third party] arbitration rights,’ not just any right under the contract.” Morales-Posada v. Cultural Care, Inc., 141 F.4th 301, 314-15 (2025) (citations omitted). A third-party attempting to compel arbitration “must show with ‘special clarity’ – or point to clear and definite evidence – that the signatories intended their agreement to benefit a third party.” Steel-Rogers, 624 F. Supp. 3d at 15 (citing Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 630-631 (2009); Landry, 485 Mass. at

338). In the context of assessing arbitration agreements between plaintiffs and staffing agencies, courts look to the language of both the subject arbitration agreement and the operative complaint to assess whether the plaintiff and the staffing agency intended to confer the benefit of the arbitration agreement on the third-party company. See Steel-Rogers, 624 F. Supp. 3d at 15 -16.

Here, the Arbitration Agreement signed by the Workforce Plaintiffs states in pertinent part:

By accepting or continuing employment with Workforce, EMPLOYEE agrees, as a condition of employment, to waive the right to pursue covered claims in Court against Workforce **and Worksite Employer** and to accept an Arbitrator's award as the final, binding, and exclusive determination of all covered claims.

...

The EMPLOYEE and Workforce agree to use this Dispute Resolution and Mutual Agreement to Arbitrate (the "Agreement"), including binding arbitration, *to resolve any and all claims, controversies or disputes* between EMPLOYEE, Workforce and/or **Worksite Employer** *that arise from, relate to, or have any occasion whatsoever with Employee's employment or other association with Workforce, including assignment to work at a Worksite Employer facility, including seeking or obtaining employment with, employment by, termination of the employment relationship or compensation, whether arising prior to or after this Agreement, except as otherwise provided in the Agreement. This means EMPLOYEE and Workforce, agree to use the Agreement to resolve all claims for which a court would be authorized to grant relief and in any way arising out of or relating to EMPLOYEE'S employment with Workforce, or assignments to work at a Worksite Employer*, except claims excluded from this Agreement.

See Dkt. 49, Exhibit 1, Attachment A, at p. 1 (emphasis added). The plain language of the Arbitration Agreement clearly confers the benefit of arbitration on the Worksite Employer to which the employee was assigned to work. Further, the Workforce Plaintiffs explicitly refer to Marder as their "work site" employer in their Complaint. See id. at ¶ 13(g) and (h). The language of the Arbitration Agreement itself, which states multiple times that it covers claims arising from the signing employee's assignment to work at a Worksite Employer, coupled with the Workforce Plaintiffs' acknowledgment that Marder was their Worksite Employer during the relevant period, is clear and definite evidence that Workforce and each of the Workforce Plaintiffs intended that the Arbitration Agreement would benefit Marder.

ii. The Arbitration Agreement is Enforceable as to Marder Under Equitable Estoppel.

The Workforce Plaintiffs' Arbitration Agreements are enforceable as to Marder under the alternative theory of equitable estoppel. "Federal courts generally 'have been willing to estop a signatory from avoiding arbitration with a non-signatory when the issues the non-signatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.'" Ouadani v. TF Final Mile LLC, 876 F.3d 31, 38 (1st Cir. 2017) (quoting InterGen NV, 344 F.3d at 145). Massachusetts law recognizes two circumstances in which equitable estoppel allows a non-signatory to compel arbitration: "(1) when a signatory 'must rely on the terms of the written agreement in asserting its claims against the non-signatory' or (2) when a signatory 'raises allegations of substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract.'" Steel-Rogers, 624 F. Supp. 3d at 17 (quoting Machado, 28 N.E.3d at 409 (citations omitted)). Here, the second circumstance is at play. "In assessing whether a plaintiff has advanced sufficient allegations of concerted misconduct, courts frequently look to the face of the complaint." Machado, 471 Mass. at 215. If plaintiffs fail to distinguish between defendants when asserting claims, they have effectively alleged "interdependent and concerted misconduct." See id. By "lumping together" defendants, plaintiffs effectively assert interdependent and concerted misconduct by those defendants. See id. at 216 ("the plaintiffs have consistently charged both System4 and NECCS with equal wrongs, failing to distinguish them throughout the evolution of this case, thereby effectively asserting 'interdependent and concerted misconduct' between them."); see also Steel-Rogers, 624 F. Supp. 3d at 18 (holding plaintiff was estopped from avoiding arbitration with non-signatory defendant because she referred to herself as "jointly employed" by both entities and asserted both entities

actions contributed to discrimination she faced, which effectively established interdependent and concerted misconduct).

Here, the Workforce Plaintiffs' Complaint contains allegations of concerted misconduct by Marder and Workforce. The Workforce Plaintiffs identify Marder as their "joint 'employer'" and their "worksite 'employer'". See Complaint at ¶ 13(g); 13(h). Indeed, Plaintiffs note "[d]uring the Relevant Time Period, Marder contracted with Workforce for workers who are employed jointly by Workforce and Marder to perform work similar to and side by side with Marder Direct Hire Employees at Marder's New Bedford sea food processing facility (the Workforce Employees at Marder)". See id. at ¶ 19. Further, four (4) of Plaintiffs' legal claims asserted in their Complaint—Count I (Violation of FLSA), Count II (Violation of MA Minimum Wage Law and the MA Wage Act), Count V (Violation of MA Wage Act), Count VI (Violation of MA TWRTK Law)—are asserted against all Defendants. Additionally, the Workforce Plaintiffs' Complaint is replete with specific allegations asserted against Defendants collectively. For example, the Workforce Plaintiffs allege *Defendants* failed to pay overtime wages at time and a half Plaintiffs' regular pay (see id. at ¶¶ 69, 70, 72, 75, 84, 85), *Defendants* took unlawful deductions from their wages by requiring them to pay a ride charge kick back to *Defendants* (see id. at ¶¶ 107, 109, 110, 112, 113), and *Defendants* unlawfully charged them for transportation for (3) years (see id. at ¶¶ 119, 121, 123, 124, 125). The Complaint on its face asserts collective wrongdoing by all Defendants. As it relates to Marder and Workforce, the Workforce Plaintiffs assert allegations of wrongdoing in their positions as joint employers. The Complaint clearly asserts "interdependent and concerted misconduct" between Marder and Workforce such that the Workforce Plaintiffs must be estopped from avoiding arbitration with Marder.

3. The Workforce Plaintiffs are Bound by the Arbitration Agreement.

Courts analyze whether a non-moving party is bound by an arbitration agreement under the same analysis set forth in Section I.1 of this Argument. See generally, Bourque v. Rollins, Inc., 764 F. Supp. 3d 11 (D. Mass. 2025) (analyzing whether plaintiff was bound by operative arbitration agreement by considering elements of signature, reasonable notice and consideration). If a court finds a valid arbitration agreement exists due to sufficient notice and intent to be bound to the terms of the arbitration agreement, it will also find the non-moving party is bound by the subject arbitration agreement. See Ellerbee v. GameStop, Inc., 604 F. Supp. 2d 349, 355 (D. Mass. 2009) (“For the arbitration agreement to be binding, Defendant ... was required only to give Plaintiff the information sufficient to put a reasonably prudent employee on adequate notice of the agreement to arbitrate.”); see also Cyganiewicz v. Sallie Mae, Inc., No. CIV.A. 13-40068-TSH, 2013 WL 6990924 (D. Mass. Oct. 24, 2013) (noting plaintiff’s signature on promissory note containing conspicuous arbitration provision was sufficient to show present intent to be bound to the terms of the promissory note, including arbitration). Here, the Workforce Plaintiffs were provided with notice of the terms of the Arbitration Agreement and expressed their intent to be bound by those terms when they signed the Arbitration Agreement. For the reasons set forth in Section I.1 of this Argument, the Workforce Plaintiffs are bound by the Arbitration Agreement.

4. The Claims set forth in the Workforce Plaintiffs’ Complaint Fall within the Scope of the Arbitration Agreement.

When making the determination of whether claims fall within the scope of an arbitration agreement, federal policy favors arbitration. See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985). “[A] party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” Green Tree Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 91 (2000). To meet this burden, the Workforce Plaintiffs must show “with

positive assurance that the [arbitration] agreement is not susceptible of an interpretation that covers the asserted dispute.” United Steelworkers of Am. v. Warrior & Gulf Nav. Co., 363 U.S. 574, 582-83 (1960).

Here, the claims asserted by the Workforce Plaintiffs in this lawsuit clearly fall within the scope of the Arbitration Agreement. The Workforce Plaintiffs’ Complaint includes allegations related to the payment of overtime wages, unlawful deductions from wages, overcharging transportation to and from work, failure to itemize all hours worked, wages paid, and deductions made on employee check stubs, and failure to provide notice, including an accurate cost of transportation to and from work. See generally, Complaint, Dkt. No. 1. The Arbitration Agreement explicitly contemplates claims arising from an employee’s assignment at a Worksite Employer. The Workforce Plaintiffs acknowledge that Marder was their Worksite Employer at all relevant times. See id. at ¶ 13(h). Per the Arbitration Agreement, the Workforce Plaintiffs agreed to “resolve any and all claims, controversies or disputes between EMPLOYEE, Workforce and/or [Marder] that arise from, relate to, or have any occasion whatsoever with Employee’s employment or other association with Workforce, including assignment to work at [Marder’s] facility” via arbitration. See Dkt. 49, Exhibit 1, Attachment A, at p. 1. This language clearly encompasses all of the Workforce Plaintiffs’ claims asserted against Marder in this lawsuit. Accordingly, the Workforce Plaintiffs must be compelled to individually arbitrate their claims against Marder.

II. The Workforce Plaintiffs Waived their Right to a Collective or Class Action.

Because the Workforce Plaintiffs’ claims against Marder are subject to arbitration, Marder requests that the Workforce Plaintiffs be required to arbitrate their claims on an individual basis. The Arbitration Agreement contains a subsection, in bold typeface, entitled "**Class Action Waiver**," which states:

All claims subject to arbitration under the Agreement *must be brought solely in the EMPLOYEE'S individual capacity*, and not as a plaintiff, claimant, representative, class representative or class member, in a purported class, collective, or multi-party action or proceeding. To this end, EMPLOYEE *agrees to waive any right to seek class certification for any and all claims against EMPLOYER, and further agrees not to participate in any and all class action lawsuits against EMPLOYER* with regard to any and all matters herein.

Id., Attachment A, at p. 3 (emphasis added).

A contractual waiver of the right to pursue class action claims is enforceable. See Levine v. Maplebear, Inc., No. 21-CV-11617-AK, 2022 WL 827290, at *5 (D. Mass. Mar. 18, 2022) (holding because arbitration agreement contained class action waiver, plaintiff could only arbitrate his claims individually); Christensen v. Barclays Bank Delaware, No. 1:18-CV-12280-ADB, 2019 WL 1921710, at *6 (D. Mass. Apr. 30, 2019) (finding class action waiver valid and compelling individual arbitration). Under the FAA, class action waivers are enforceable as a term of an Arbitration Agreement. See Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1619 (2018) (“In the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings.”); Am. Exp. Co. v. Italian Colors Rest., 570 U.S. 228, 234-239 (2013) (holding a contractual waiver of class arbitration is enforceable under the FAA even when plaintiff’s cost of individually arbitrating exceeds potential recovery); AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 346-352 (2011) (invalidating rule that class action waivers found in consumer adhesion contracts are unenforceable).

As noted herein, the Workforce Plaintiffs were on notice of the class action waiver, they accepted the terms of the class action waiver by signing the Arbitration Agreement containing the class action waiver clause, and the class action waiver is supported by consideration. Accordingly, Marder requests this Court not only compel arbitration pursuant to the Arbitration Agreements but also order the Workforce Plaintiffs to arbitrate their claims individually.

III. The Court should Stay the Litigation against Marder.

Section 3 of the FAA requires when issues brought before a court are arbitrable, the court shall “stay the trial of the action until such arbitration has been had in accordance with the terms of the [arbitration] agreement.” 9 U.S.C. § 3. A stay of litigation is appropriate pending the outcome of arbitration. See, e.g., Smith v. Spizzirri, 601 U.S. 472, 144 S. Ct. 1173, 218 L. Ed. 2d 494 (2024) (“When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.”); Jarrett Schwartz v. HelloFresh SE & Factor75, LLC, No. 1:25-CV-12222-JEK, 2026 WL 161514, at *7 (D. Mass. Jan. 21, 2026) (granting motion to compel arbitration and staying litigation pending the outcome of arbitration); Levine, 2022 WL 827290, at *6 (same). Even if this Court were to determine that the Workforce Plaintiff’s claims are only subject to arbitration as between the Workforce Plaintiffs and Workforce, a stay of litigation as to the non-arbitrating parties pending the outcome of the arbitration is within this Court’s inherent authority. See Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20 n.23 (1983); accord McCarthy v. Azure, 22 F.3d 351, 361 n.15 (1st Cir. 1994). Accordingly, Marder requests this Court stay all proceedings against Marder as to the Workforce Plaintiffs pending the outcome of arbitration, pursuant to 9 U.S.C. § 3. Marder further requests that this Court stay these proceedings as to Plaintiff Maximiliano Diaz Perez against Marder at least until this Court rules on the issue of arbitration as the Court’s ruling could substantially change the parties and claims in this action.

CONCLUSION

For the forgoing reasons, Defendant Marder Trawling, Inc. respectfully requests that this Court enter an Order compelling Plaintiffs Lorenzo Suar Panjoj, Maria Lucrecia Tzampop Gomez, Yohangly Mishell Garcia Mendez, and Maily Adriana Velasquez Morales to proceed to individual

arbitration on their claims in accordance with their signed agreements to do so and staying Plaintiffs' claims as to Marder Trawling, Inc.

Respectfully submitted,

MARDER TRAWLING, INC.,
By its attorneys,



Jennifer L. Markowski, BBO # 655927
Jennifer.markowski@fmglaw.com
Alexandra F. Held, BBO # 711052
Alexandra.held@fmglaw.com
Freeman, Mathis & Gary LLP
One Boston Place
201 Washington Street, Suite 2200
Boston, MA 02108
(617) 963-5975

Dated: February 5, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2026, this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be served upon non-registered participants.



Jennifer L. Markowski