IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KOLY CAMARA
Individually, on Behalf of All Others Similarly Situated, and on Behalf of the General Public of the District of Columbia,

Plaintiff,

v.

MASTRO'S RESTAURANTS LLC,

Defendant.

Civil Action No. 1:18-cv-724 (JEB)

ORAL ARGUMENT REQUESTED

DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS

Defendant Mastro's Restaurants LLC, by and through its undersigned counsel, hereby moves the Court for an Order requiring Plaintiff to resolve his claims against Defendant in arbitration and dismissing his lawsuit. Plaintiff's counsel has advised Defendant's counsel he opposes Defendant's motion.

In support of the Motion, Defendant submits the attached Statement of Points and Authorities, the Exhibits thereto, and a Proposed Order for the Court's consideration.

DATED: June 14, 2018

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Rebecca S. Bjork

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**Admitted Pro Hac Vice*

Counsel for Defendant

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I. INTRODUCTION

Just three weeks ago, after Defendant invoked federal question jurisdiction and removed Plaintiff's case to this Court, the Supreme Court of the United States issued a ruling that has profound importance for this lawsuit and means that it should not proceed any further. The Court's decision in *Epic Systems Corp. v Lewis*, Nos. 16–285, 16–300, 16–307, --- S. Ct. ---, 2018 WL 2292444 (U.S. May 21, 2018) settled a split among the federal circuit courts regarding whether an employer may require its employees to resolve legal workplace disputes that arise relating to their employment in arbitration rather than court on an individual, non-class and non-collective action basis. The Supreme Court held that yes, employers may do so, and courts must enforce those agreements strictly and vigorously because the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq*., unambiguously reflects Congress' intent to favor private arbitration over civil litigation. This holds even where another federal statute provides workplace protections for employees.

The Supreme Court's holding in *Epic Systems* means that Plaintiff's claims here may not go forward in court because Defendant and Plaintiff came to an agreement that he would not sue over any alleged violations of law during his employment but would instead arbitrate his claims on an individual basis. This conclusion is inevitable for several reasons.

First, Defendant established a mandatory workplace arbitration program in the summer of 2015. This is the same time period that Plaintiff alleges in his Amended Complaint that he began working as a server at Mastro's Steakhouse Restaurant in Washington, DC. The form arbitration agreement that Defendant presents to all of its employees was slightly altered in May 2016 and has been in place since the program began. The arbitration agreement (described in detail in Section II *infra* and included in a supporting Declaration) states in clear, bold face type that by accepting employment, the employee agrees that if he has any legal dispute arise over the

employment relationship with Defendant, he will not file a lawsuit but will arbitrate his claims instead and do so on an individual but not class or collective action basis.

In implementing this program, Defendant required compliance by local managers and monitored it. While Defendant has not yet located the original of Plaintiff's form arbitration agreement showing his signature, data and information maintained by Defendant proves that Plaintiff signed the agreement on June 25, 2015, and Plaintiff continued to work at the Washington DC Mastro's for approximately one and a half years, until October 29, 2016. Under the Supreme Court's majority decision in *Epic Systems* as well as other longstanding case law, these facts demonstrate a sufficient meeting of the minds to bind Plaintiff to his agreement to arbitrate any workplace disputes on an individual basis.

Second, the staging of the Court's decisions on the pending motions is crucial. The propriety of arbitration must be decided before conditional certification for both legal and practical reasons. The Company's policy since June 2015 has been that the agreements are a condition of employment for all new employees, and the facts show that approximately 53 employees of Defendant in the Washington DC restaurant alone have also agreed to arbitrate any workplace disputes with their employer and to do so on an individual, non-class or collective action basis, having signed the same form arbitration agreement. Many more servers in restaurants around the country have as well, and Defendant's investigation is just beginning. In fact, the Company has currently located arbitration agreements for three of their declarants in support of their motion signed agreements making their claims subject to arbitration. As such, it makes little sense to proceed with Court-ordered notice of a conditionally certified collective action covering those very same claims that are clearly subject to private arbitration.

Third, the very existence of a question as to whether the Named Plaintiff and other employees of Defendant did or did not sign agreements to arbitrate any employment disputes individually means that Plaintiff's pending motion for conditional certification and notice should be denied in abeyance to Defendant's motion for arbitration.

For all of these reasons, the Court should grant Defendant's Motion to compel arbitration and dismiss this litigation.

II. FACTUAL BACKGROUND

Plaintiff Koly Camara was employed by Defendant in Mastro's Steakhouse Restaurant in Washington, D.C., and his employment with Defendant ended on October 29, 2016. (Declaration of Stephen Carcamo ("Carcamo Decl.") ¶ 6.)

As of June 2015, it has been Defendant's policy to require all employees to execute an arbitration agreement substantially identical to the form attached to the Declaration of Laura Jasso, Director of Human Resources, submitted in support of this Motion. (Jasso Decl. ¶ 4, Exhibit A; *see also* Carcamo Decl. ¶ 3.) This agreement requires arbitration of all workplace legal disputes on an individual, non-class and collective action basis, providing:

> **BY SIGNING THIS AGREEMENT, THE EMPLOYER AND EMPLOYEE AGREE THAT EACH MAY BRING AND PURSUE CLAIMS AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITIES, AND MAY NOT BRING, PURSUE OR ACT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR COLLECTIVE PROCEEDING…. THE PARTIES FURTHER AGREE THAT NEITHER PARTY MAY BRING, PURSUE, OR ACT AS A PLAINTIFF OR REPRESENTATIVE IN ANY PURPORTED REPRESENTATIVE PROCEEDING OR ACTION, OR OTHERWISE PARTICIPATE IN ANY SUCH REPRESENTATIVE PROCEEDING OR ACTION OTHER THAN ON AN INDIVIDUAL BASIS EXCEPT TO THE EXTENT THIS PROVISION IS UNENFORCEABLE AS A MATTER OF LAW…. I FURTHER UNDERSTAND THAT I MUST SIGN THIS AGREEMENT BEFORE I MAY BEGIN OR CONTINUE MY EMPLOYMENT WITH THE EMPLOYER.**

(Jasso Decl. ¶ 4, Exhibit A, at 2; *see also* Carcamo Decl. ¶ 3.)

Mastro's informed all of the managers in its locations across the country that every employee was required to sign the arbitration agreement. (Jasso Decl. ¶ 4; *see also* Carcamo Decl. ¶ 3.) Detailed instructions were provided to restaurant General Managers on how to administer the arbitration agreement program. (Jasso Decl. ¶ 5.) To date, it remains Defendant's policy to require all employees to execute an arbitration agreement substantially identical to the one rolled out in June 2015. (Jasso Decl. ¶ 6; *see also* Carcamo Decl. ¶ 7.)

The Washington, D.C. location was very successful in its implementation of the rollout of the arbitration policy and its management was personally proud of the level of compliance achieved because virtually every Washington, D.C. employee of Mastro's Steakhouse Restaurant has signed an individual arbitration agreement. (Carcamo Decl. ¶ 3.) Given the status of Defendant's current knowledge and investigation, at least 53 servers at the Mastro's location in Washington, D.C. signed the individual arbitration agreement. (Carcamo Decl. ¶ 9.) Despite a diligent and ongoing search, Defendant has not yet located the original signed version of Plaintiff's arbitration agreement. (Carcamo Decl. ¶ 8.)

To track compliance with the policy requiring that restaurants obtain arbitration agreements from all employees, Defendant maintains a database showing the employees at each restaurant and the dates on which they signed their arbitration agreements. This database is kept in the normal course of business and entries are made contemporaneously with an employee's execution of his or her individual arbitration agreement. (Jasso Decl. ¶ 7; *see also* Carcamo Decl. ¶ 4.) Defendant's arbitration agreement compliance database shows that Mastro's Steakhouse Restaurant in Washington, D.C. affirmed that Plaintiff signed his individual arbitration agreement on June 25, 2015. (Jasso Decl. ¶ 7, Exhibit C; *see also* Carcamo Decl. ¶ 5, Exhibit B.)

Defendant's compliance database shows that given Defendant's current knowledge, subject to further investigation, more than 500 employees holding the position of server between June 2015 and May 2018 executed an arbitration agreement substantially identical to Exhibit A. (Jasso Decl. ¶ 8.)

III. LEGAL STANDARD

Arbitration agreements must be enforced according to their terms. The Supreme Court recently announced very clearly that even where a plaintiff asserts entitlement to class and collective action procedures, "as a matter of law the answer is clear. In the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings." *Epic Systems*, 2018 WL 2292444, at *3; *see also CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 668-69 (2012) (noting this applies "even when federal statutory claims are at issue"). The FAA "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Perry v. Thomas*, 482 U.S. 483, 489 (1987); *see also Hill v. Wackenhut Servs. Int'l*, 865 F. Supp. 2d 84, 90 (D.D.C. 2012) (Boasberg, J.), ("The FAA thus creates a strong presumption in favor of enforcing arbitration agreements, and 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'") (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)). Moreover, the FAA preempts any state law that would undermine its purpose and effect. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351 (2011) (noting that "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons.").

"When considering a motion to compel arbitration, 'the appropriate standard of review for the district court is the same standard used in resolving summary judgment motions' pursuant

to Federal Rule of Civil Procedure 56(c)." *Hill*, 865 F. Supp. 2d at 89 (quoting *Aliron Int'l, Inc. v. Cherokee Nation Indus., Inc.*, 531 F.3d 863, 865 (D.C. Cir. 2008). Questions of arbitrability are resolved by courts pursuant to the FAA, not arbitrators. 9 U.S.C. § 4 (a party may petition "for an order directing that such arbitration proceed in the manner provided for in such agreement.").

A party seeking to compel arbitration must submit "evidence sufficient to demonstrate an enforceable agreement to arbitrate." *Hill*, 865 F. Supp. 2d at 89. Unless the party opposing arbitration is then able to carry its burden to raise and support a genuine issue of material fact as to the making of an agreement, "[a]rbitration shall be compelled." *Id*. *See also Nelson v. Insignia/Esg, Inc.*, 215 F. Supp. 2d 143, 146 (D.D.C. 2002) (court must "determine the enforceability of the agreement [to arbitrate] and decide whether arbitration should be compelled.").

As set forth below, the Court should require Plaintiff to pursue his claims on an individual basis in arbitration and dismiss the litigation because all of the facts and circumstances lead to the conclusion that the parties came to an agreement to arbitrate under the terms of Defendant's mandatory workplace arbitration program and their conduct during the course of Plaintiff's employment.

IV. ARGUMENT

A. PLAINTIFF'S CLAIMS MUST GO TO ARBITRATION AS THE PARTIES AGREED

The law regarding agreements that waive class arbitration has been steadily developed by the Supreme Court over the past few years, but it is now firmly established that the purposes of arbitration enshrined in the FAA mandate strict enforcement of such waivers. Last month in *Epic Systems*, 2018 WL 2292444, at *17, the Supreme Court concluded that the National Labor

Relations Act does not guarantee any right to class action litigation and that under the FAA, parties are free to determine what arbitration procedures will apply in their cases. Accordingly, the Supreme Court held that parties can agree to waive the right to class litigation in employment arbitration agreements.

This is what occurred here, as the facts *supra* demonstrate, so the Court should enter Defendant's Proposed Order compelling Plaintiff to arbitrate his claims and dismissing the litigation. The parties' mutual agreement to arbitrate employment disputes here should be analyzed with the FAA's broad purpose in mind. When the arbitration policy was implemented, Plaintiff and his co-workers were presented with the form arbitration agreement that clearly and expressly states any claims over their employment are subject to individual arbitration only. Defendant's compliance database documents Plaintiff's agreement to the form arbitration agreement. New hires into the position Plaintiff purports to draw his class population from were likewise presented with the agreement, which also indicates that agreeing to it is a condition of employment. Under these facts and governing Supreme Court decisions, the arbitration agreement must be enforced.

Defendant anticipates that Plaintiff will argue that it is Defendant's burden to demonstrate affirmatively that Plaintiff did sign the arbitration agreement in order for there to be a meeting of the minds sufficient to bind him to its terms. But significantly, the majority of the Supreme Court in *Epic Systems* rejected this perspective. The Court issued its ruling affirming the waiver despite the dissent's explicit objection that the plaintiff in *Epic Systems* had only been emailed notice that the company had implemented an arbitration program, along with a copy of the form agreement. *Epic Systems*, 2018 WL 2292444, at *21, n.2 (Ginsburg, J., dissenting). Notwithstanding this stated concern, the majority *still* found Epic System's arbitration program

to be fully enforceable under the FAA, thus necessarily rejecting the view (like Plaintiff's apparent view) that there was insufficient basis to conclude he had agreed to the form agreement. Other courts have come to similar conclusions. *See cf. Craig v. Brown & Root, Inc.*, 84 Cal. App. 4th 416, 418 (Cal. App. 2000). The plaintiff in *Craig* worked for a company acquired by Brown & Root. After Brown & Root acquired the company, it sent notice to Craig via mail that it was instituting a workplace arbitration program that would "govern all future legal disputes between [Craig] and the Company." *Id.* at 418-19. The court held that, in continuing to work after receiving notice of the arbitration program, Craig had agreed to the arbitration program. *Id.* at 421. *See also Wulfe v. Valero Refining Co.*, 641 F. App'x 758, 760 (9th Cir. 2016) ("Here, Wulfe impliedly agreed to arbitrate because the arbitration agreement was a condition of his employment; Wulfe was aware that if he continued to work, he would be bound by this condition; and Wulfe continued his employment with Valero after the arbitration agreement went into effect.").

The importance of this Supreme Court decision is reflected in the fact that courts interpreting *Epic Systems* have already recognized its importance and compelled arbitration, including upon reconsideration, or granted other related relief. *See Camilo v. Uber Techs., Inc.*, No. 17 Civ. 9508, 2018 WL 2464507, at *3 (S.D.N.Y. May 31, 2018) (granting the defendant's motion to strike class allegations based on a class waiver in an arbitration agreement); *Williams v. Dearborn Motors 1, LLC*, No. 17-12724, 2018 WL 2364051, at *5-6 (E.D. Mich. May 24, 2018) (granting the defendant's motion to dismiss the class claims and compel individual arbitration); *Curatola v. Titlemax of Tenn. Inc.*, No. 1:16-cv-01263, 2018 WL 2728037, at *7 (W.D. Tenn. June 6, 2018) (staying the litigation and ordering individual arbitration in light of a class action waiver); *Davis v. Red Eye Jack's Sports Bar, Inc.*, 3:17-cv-01111, 2018 WL

2734037, at *2 (S.D. Cal. June 7, 2018) (reconsidering and reversing earlier decision denying a motion to compel arbitration).

There is no question that the arbitration agreement covers Plaintiff's alleged claims since it expressly applies to disputes over tips and compensation. (Jasso Decl. ¶ 3, Exhibit A.) "[I]t has been established that where the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that 'an order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *AT&T Techs., Inc. v. Comm. Workers of Am.*, 475 U.S. 643, 650 (1986) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)). Plaintiff's allegation that he was not properly compensated is clearly a claim that is covered by the scope of the arbitration agreement. *Hill*, 865 F. Supp. 2d at 99 ("The scope of the arbitration clause here is very broad, stating that '*all claims* that you might have against Employer related to your employment . . . must be submitted to binding arbitration instead of to the court system.' . . . Each count set forth in the Complaint falls under this umbrella.") (emphasis added) (citation omitted)).

The arbitration agreement is also enforceable. Under District of Columbia law, "where an employee has been provided with the opportunity to read an agreement whose terms concerning a duty to arbitrate are understandable, and there are no facts that suggest that material terms 'were intentionally withheld from' the employee, the agreement should not be invalidated in the absence of 'duress, fraud, or coercion."[1] *Brown v. Dorsey & Whitney, LLP*, 267 F. Supp.

[1] District of Columbia law on enforceability of contracts is relevant here because the arbitration agreement provides for application of the local law where the employee works and the arbitration agreement also additionally provides that the FAA applies. (Jasso Decl. ¶ 3, Exhibit A, at 1). It is notable here that the Supreme Court clarified in *Epic Systems* that only "generally" applicable

2d 61, 82 (D.D.C. 2003) (quoting *Nur v. K.F.C., USA, Inc.*, 142 F. Supp. 2d 48, 51 (D.D.C. 2001) (upholding arbitration agreement as plaintiff's comprehension as to "the implications of his decision is irrelevant" to validity of the agreement.")).[2] Plaintiff will not be able to bear his burden of raising a genuine issue of material fact that barriers to enforceability like these are present here because there simply is no evidence that Plaintiff agreed to arbitration due to duress, fraud, or coercion. *See Hill*, 865 F. Supp. 2d at 93.

Accordingly, Plaintiff's claims are properly subject to arbitration, especially given the clear direction from the Supreme Court that such agreements are to be strictly enforced.

B. THE DECISION ON ARBITRATION MUST PRECEDE THE DECISION ON CONDITIONAL CERTIFICATION AND NOTICE

It also makes logical legal and practical sense to decide Defendant's motion for arbitration before Plaintiff's motion for notice to putative class members informing them that they may be similarly situated to others in a lawsuit pending in federal court. Obviously, if Defendant prevails on this Motion, the case will not even be in court, and furthermore, there will be no class or collective action procedural device available to Plaintiff in arbitration per the clear language of his agreement, making Plaintiff's motion moot. It is equally evident that from a pragmatic standpoint, issuing notice to a putative class before ruling on this Motion is ill-advised, given that Defendant has already determined that many individuals Plaintiff's counsel would contact are *themselves* subject to compelling arbitration on any claims they would assert against Defendant since they too agreed to arbitrate instead of sue. (Jasso Decl. ¶ 8.)

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contract defenses under state law are available under the FAA's savings clause. *Epic Systems*, 2018 WL 2292444, at *6.

[2] Recall that the Supreme Court has held that state laws barring class or collective action waivers in arbitration agreements are preempted by the FAA. *Concepcion*, 563 U.S. at 351.

Plaintiff's motion for conditional certification asks the Court to issue notice of a collective action that includes individuals who have signed arbitration agreements. (ECF No. 14; Jasso Decl. ¶ 8.) The Court has the opportunity to decide whether such individuals can join this action when it decides the instant Motion. Should the Court conclude that such individuals cannot join this putative collective action, this would also necessarily mean that notice should not be sent to such individuals. *See, e.g.*, *Longnecker v. American Express Co.*, No. 14-CV-0069, 2014 WL 4071662, at *7 (D. Ariz. Aug. 18, 2014) (declining to send notice to potential opt-ins hired after date company had all new hires sign an arbitration agreement since "there [was] no reason to give notice to any employee hired on or after" that date); *Fischer v. Kmart Corp.*, No. 13-CV-4116, 2014 WL 3817368, at *7-8 (D.N.J. Aug. 4, 2014) (denying conditional certification for potential opt-ins who signed collective action waivers because such potential opt-ins were "not similarly situated to members who can arbitrate in a collective action"); *Adami v. Cardo Windows, Inc.*, 299 F.R.D. 68, 81 (D.N.J. 2014) (excluding individuals who signed arbitration agreements from a collective action at the conditional certification stage because they were not similarly situated). If the Court were to decide the Motion for Conditional Certification before the motion to compel arbitration, it might inadvertently cause notice to be sent to individuals who cannot join the collective action and thus should not have received notice. That would be wasteful and inefficient.

Moreover, the imposition of class procedures where they have not been agreed to, or are not authorized by law, should be rejected because doing so can impose unwarranted settlement pressure on defendants. That would clearly be the outcome here if the motion to issue notice were granted before the propriety of individual arbitration was decided. While "class actions can enhance enforcement . . . , it's also well known that they can unfairly 'plac[e] pressure on the

defendant to settle even unmeritorious claims'" *Epic Systems*, 2018 WL 2292444, at *16 (quoting *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445, n.3 (2010) (Ginsburg, J., dissenting)).

For all of these reasons, the instant Motion needs to be resolved prior to Plaintiff's motion for conditional certification and notice.

C. PUTATIVE CLASS MEMBERS AGREED TO ARBITRATION, UNDERMINING PLAINTIFF'S REQUEST FOR NOTICE OF A CONDITIONALLY-CERTIFIED COLLECTIVE ACTION

Plaintiff is asking this Court to allow him to send a Court-approved notice nationwide to a group of Defendant's employees who have worked as servers under an undisputed mandatory workplace arbitration program whereby they waived bringing collective and class claims. And he asks the Court to issue such a notice for all such employees working in that role during more than the past three years. Even if Plaintiff succeeds in somehow demonstrating that he himself never agreed to that arbitration program, despite working in his job under it for years afterwards, the waste of resources involved in such a quest for legitimate legal claims for others is simply untenable. The analysis that would be required to separate those who may opt in to such a collective from those who may not, given the circumstances surrounding their own individual agreements to arbitrate, demonstrates on its own that putative class members are not similarly situated in a manner sufficient to justify notice. This is especially true under Plaintiff's apparent theory that he did not agree to arbitrate.

Courts have found that members of proposed collective actions are not similarly situated where, unlike a distinct population of the proposed collective action, a plaintiff did not enter into an employee arbitration agreement. *See Freeman v. Easy Mobile Labs, Inc.*, No. 1:16-CV-00018-GNS, 2016 WL 4479545, at *2 (W.D. Ky. Aug. 24, 2016) (finding that members of the proposed collective who did not sign arbitration agreements not similarly situated to those who

did). Accordingly, those individuals who signed arbitration agreements are unable to participate in this case, and it would be a waste of resources to invite such individuals to temporarily join this lawsuit. *See Longnecker*, 2014 WL 4071662, at *7 (declining to send notice to potential opt-ins hired after date company had all new hires sign an arbitration agreement since "there [was] no reason to give notice to any employee hired on or after" that date); *Fischer*, 2014 WL 3817368, at *7-8 (denying conditional certification for potential opt-ins who signed collective action waivers because such potential opt-ins were "not similarly situated to members who can arbitrate in a collective action"); *Adami*, 299 F.R.D. at 81 (excluding individuals who signed arbitration agreements at the conditional certification stage because they were not similarly situated).

While Defendant will oppose Plaintiff's motion on additional grounds when its opposition to that motion is required to be submitted, it is clear that the question of whether a person did or did not sign their arbitration agreement with Defendant presents a dispositive threshold question that undermines the very premise of Plaintiff's motion and further justifies ruling on Defendant's instant Motion as an initial decision in the litigation.

D. THE CASE SHOULD BE DISMISSED AFTER REFERRAL TO ARBITRATION

The only remaining question is the proper course of action with regard to the lawsuit against Defendant. As the Court knows, it may retain jurisdiction of the case and issue a stay of the litigation pending arbitration of the parties' dispute. *See* 9 U.S.C. § 3 ("[U]pon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, [the court] shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . ."); *Hill*, 865 F. Supp. 2d at 99 (granting

motion to compel arbitration and staying litigation.) However here, it is more appropriate for this Court to compel arbitration and dismiss the lawsuit, rather than staying any claims.

Two reasons support this conclusion. First, the arbitration agreement, the terms of which the Court must strictly enforce according to the controlling authorities cited in Section IV.A., *supra*, itself provides that no party to the agreement may bring a covered claim in court. Under similar circumstances, courts have rejected requests to stay, in favor of dismissal. *See Sakyi v. Estee Lauder Cos.*, No. 17-CV-1863 (BAH), 2018 U.S. Dist. LEXIS 69322, at *43 (D.D.C. Apr. 25, 2018) (dismissing case after compelling arbitration where the parties stated "in the Arbitration Agreement, that neither party would 'file any lawsuit against the other in any Court'"); *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1379 (11th Cir. 2005) (concluding in an FLSA lawsuit that "the district court properly granted defendants' motion to dismiss and to compel arbitration").

Second, dismissal is proper when "all the claims against all parties are subject to arbitration." *Torres v. Simpatico, Inc.*, 995 F. Supp. 2d 1057, 1065 (E.D. Mo. 2014), *aff'd*, 781 F.3d 963 (8th Cir. 2015); *Hays v. Saturn Of Kansas City, Inc.*, No. 00-1005-CV-W-6, 2001 U.S. Dist. LEXIS 26189, at *8 (W.D. Mo. June 6, 2001) ("[T]he court has inherent discretion to dismiss a case in this posture.") (citations omitted). *See also Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001) ("dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable"); *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000) ("weight of authority clearly supports dismissal of the case"); *Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 179 (3d Cir. 1998) (where "all the claims involved in an action are arbitrable, a court may dismiss the action instead of staying it.") (citations omitted).

As explained above, all claims brought by Plaintiff must be submitted to arbitration under the agreement. Nothing remains for the Court to do. Therefore, dismissal is appropriate.

V. CONCLUSION

For all of the foregoing reasons, Defendant requests that the Court grant its Motion to Compel Arbitration and Dismiss and award any and such further relief as is just and warranted.

DATED: June 14, 2018

Respectfully submitted,

SEYFARTH SHAW LLP

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**Admitted Pro Hac Vice*

Counsel for Defendant

UNITED STATES DISTRICT COURT
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Plaintiff,

v.

MASTRO'S RESTAURANTS, LLC,

Defendant.

Case No. 1:18-cv-724 (JEB)

DECLARATION OF STEPHEN CARCAMO

I, STEPHEN CARCAMO, based on my personal knowledge and pursuant to 28 U.S.C. § 1746 declare as follows:

1. I am over the age of 18 and I have personal knowledge of the following facts.

2. I am the General Manager of the Washington, D.C. location of Mastro's Restaurants, LLC, Defendant in the above-captioned matter. I am familiar with the documentation given to, and agreements executed by, new hires and existing employees, as well as Defendant's maintenance of records regarding the same.

3. As of June 2015, it has been Defendant's policy to require all employees to execute an Arbitration Agreement, and it has been the Washington, D.C. location's practice and policy to comply with Defendant's requirements for requiring that individual Arbitration Agreements be signed by employees. I have personally presented new hires and current employees with individual Arbitration Agreements and have obtained their signatures. The Washington, D.C. location was very successful in its implementation of the rollout of the arbitration policy, and I was personally proud of the level of compliance we achieved. To my

knowledge, virtually every Washington, D.C. Mastro's employee has signed an individual Arbitration Agreement.

4. Whenever an employee signs an Arbitration Agreement, it is Defendant's practice that a manager note that in the personnel information section of NBO, where we input other information about that individual (i.e. address, tax withholding information, date of hire, etc.). Then, a report is then generated that shows the individuals who signed arbitration agreements. The NBO system records the time when changes are made to an employee's record.

5. A true and correct copy of an extract from the NBO system is attached as Exhibit B. The contemporaneous data on the spreadsheet shows that we changed the notation in the NBO system evidencing that Plaintiff Koly Camara executed an Arbitration Agreement on June 25, 2015.

6. Mr. Camara remained employed at the Mastro's Washington D.C. location under my management until October 29, 2016.

7. To date, it remains Defendant's policy to require all employees to execute an Arbitration Agreement identical to Exhibit A. The Mastro's Washington, D.C. management has not experienced difficulties in obtaining signatures from current employees or new hires.

8. After the instant litigation was filed, I searched locally-maintained files to locate the individual Arbitration Agreement signed by Mr. Camara. Between the end of February and early March I continued to search and asked other management staff to assist in conducting a diligent search through personnel files and other files both on- and off-site. At this time, we have been unsuccessful in finding Mr. Camara's Arbitration Agreement. I am continuing to search for Mr. Camara's signed individual Arbitration Agreement.

9. To my knowledge, at least 53 servers at the Mastro's location in Washington, D.C. signed individual Arbitration Agreements.

I declare pursuant to 28 U.S.C. § 1746 and under penalty of perjury that the foregoing is true and correct.

DATED: June 14, 2018

By: _____
STEPHEN CARCAMO

EXHIBIT A

MUTUAL AGREEMENT TO ARBITRATE CLAIMS

In consideration of the at-will employment relationship between the Employer[1] and Employee and the mutual desire of the parties to enter into this Mutual Agreement to Arbitrate Claims ("Agreement"), the parties hereby agree that any and all disputes, claims or controversies between the parties, including but not limited to any dispute arising out of or relating to this Agreement, the employment relationship between the parties, or the formation or termination of the employment relationship, which are not resolved by their mutual agreement shall be resolved by final and binding arbitration by a neutral arbitrator. For purposes of this Agreement, Employer shall also include any claims that the Employee has against Employer and/or its officers, directors, employees, owners, shareholders, members, agents, representatives, benefit plans, sponsors, fiduciaries, agents, parents, subsidiaries, or affiliated entities, as well as claims the Employer has against the Employee, regardless of whether or not such claims arise during or after the termination of the employment relationship between the parties.

The claims covered by this Agreement include, but are not limited to, claims for: wrongful termination; breach of any contract or covenant, express or implied; breach of any duty owed to Employee by Employer or to Employer by Employee; personal, physical or emotional injury (excluding claims covered under any workers' compensation statute); discrimination or harassment because of race, gender, color, pregnancy, religion, national origin, ancestry, age, disability, medical condition, marital status, sexual orientation, gender identity or any other characteristic protected by applicable law; retaliation; violation of any local, state, or federal constitution, statute, law, ordinance or regulation; fraud, misrepresentation, defamation, invasion of privacy, and any other tort claims; wages, overtime, premiums, gratuities, tips, service/administrative charges, or any other compensation due; penalties; benefits; reimbursement of expenses; and any claim for trade secret violations or unlawful competition. This Agreement shall be binding on all of the parties, their heirs, and successors. This Agreement shall not apply to any dispute if an agreement to arbitrate such dispute is prohibited by law. The laws of the state of the Employee's place of employment shall govern this Agreement.

In arbitration, each side in the dispute presents its case, including evidence, to a neutral third party called an "arbitrator," rather than to a judge or jury. By signing this Agreement, the parties agree that any arbitration shall be conducted before one neutral arbitrator selected by the parties and shall be conducted under the JAMS Employment Arbitration Rules & Procedures ("JAMS Rules") then in effect. The arbitrator shall be either an attorney or a retired judge. *Employee may obtain a copy of the JAMS Rules by requesting a copy from Human Resources or by accessing the JAMS website at www.jamsadr.com*. **By signing this Agreement, Employee acknowledges that Employee has had an opportunity to review the JAMS Rules before signing this Agreement.** The parties agree that this Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq* ("FAA"). The parties also understand and agree that the Employer is engaged in transactions involving interstate commerce.

The arbitration shall take place within 25 miles from where Employee worked for the Employer. The parties are entitled to be represented by their own legal counsel in the arbitration proceeding and agree to maintain the proceedings and the award, including the hearing, as confidential, except as is otherwise required by court order, required by law, or as is necessary to confirm, vacate or enforce the award. The arbitrator shall have the authority to order such discovery by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary for a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration. The arbitrator is authorized to award any remedy or relief available under applicable law that the arbitrator deems just and equitable, including any remedy or relief that would have been available to the parties had the matter been heard in a court. Nothing in this Agreement shall prohibit or limit the parties from seeking provisional remedies, such as injunctive relief from a court of competent jurisdiction. The arbitrator shall have the authority to provide for the award of attorney's fees if such award is separately authorized by applicable law. The Employer shall pay all arbitrators' fees and any JAMS arbitration administrative expenses. The decision of the arbitrator shall be in writing and shall provide the reasons for the award unless the parties agree otherwise. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. **The arbitrator's decision is final and binding which means there will be no trial by a judge or jury, or ability to appeal the arbitrator's decision except as provided by the FAA or analogous state law.**

[1] Your "Employer" is generally the entity that owns and operates the restaurant/business at which you work. The actual entity name of your employer can be found on your paychecks and W2 forms.

This Agreement may only be amended by a signed writing executed by Employer and Employee. The terms of this Agreement control over any prior or subsequent oral discussions you may or have had with an Employer representative about arbitration.

BY SIGNING THIS AGREEMENT, THE PARTIES HEREBY WAIVE THEIR RIGHT TO HAVE ANY DISPUTE, CLAIM OR CONTROVERSY DECIDED BY A JUDGE OR JURY IN A COURT.

BY SIGNING THIS AGREEMENT, THE EMPLOYER AND EMPLOYEE AGREE THAT EACH MAY BRING AND PURSUE CLAIMS AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITIES, AND MAY NOT BRING, PURSUE OR ACT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR COLLECTIVE PROCEEDING.

THE PARTIES FURTHER AGREE THAT NEITHER PARTY MAY BRING, PURSUE, OR ACT AS A PLAINTIFF OR REPRESENTATIVE IN ANY PURPORTED REPRESENTATIVE PROCEEDING OR ACTION, OR OTHERWISE PARTICIPATE IN ANY SUCH REPRESENTATIVE PROCEEDING OR ACTION OTHER THAN ON AN INDIVIDUAL BASIS EXCEPT TO THE EXTENT THIS PROVISION IS UNENFORCEABLE AS A MATTER OF LAW.

THE PARTIES AGREE THAT A COURT, NOT THE ARBITRATOR, SHALL DETERMINE WHETHER ANY CLAIMS MUST PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS.

THE PARTIES AGREE THAT ANY REPRESENTATIVE CLAIMS THAT ARE FOUND NOT SUBJECT TO ARBITRATION UNDER THIS AGREEMENT SHALL BE RESOLVED IN COURT AND ARE STAYED PENDING THE OUTCOME OF THE ARBITRATION.

In the event that any provision of this Agreement is held to be void, null or unenforceable, the remaining portions shall remain in full force and effect. If Employee has any questions about this Agreement or wishes to have any of its terms explained, Employee may ask Human Resources (1-800-394-3839). Employee may also wish to consult an attorney about the pros and cons of this Agreement.

The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.

Should Employee work for more than one Employer and/or transfer to a new Employer, this Agreement shall remain valid and enforceable as to all Employers for whom Employee has worked. This Agreement shall survive termination of any employment relationship between Employee and any Employer.

I ACKNOWLEDGE THAT BEFORE I SIGNED THIS AGREEMENT I HAVE HAD AN OPPORTUNITY TO ASK QUESTIONS CONCERNING IT. I UNDERSTAND THAT I AM PERMITTED TO TAKE THIS AGREEMENT WITH ME AND REVIEW IT WITH AN ATTORNEY OF MY CHOICE IF I SO DESIRE. I FURTHER UNDERSTAND THAT I MUST SIGN THIS AGREEMENT BEFORE I MAY BEGIN OR CONTINUE MY EMPLOYMENT WITH THE EMPLOYER.

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS MUTUAL AGREEMENT TO ARBITRATE CLAIMS, THAT I UNDERSTAND ITS TERMS, AND THAT I HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY, WITHOUT UNDUE PRESSURE AND NOT IN RELIANCE ON ANY PROMISE OR REPRESENTATION BY THE EMPLOYER OR ANY PERSON OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EMPLOYEE	**EMPLOYER**
_____ (Print Name)	*Julia Liebelt* **By:** _____
_____ (Signature)	**Its: Vice President of Human Resources**
_____ (Date)	

NOTICE: Employer reserves the right to reject this Agreement if any changes are made by Employee.

EXHIBIT B

TransactionTime	EmployeeNumber	SSN	NewFirstName	NewLastName	NewAddress1	NewCity	NewStateI	NewCounI	NewPostalCode	NewSSN	NewPhone	NewCustomField4
11:20.8	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
11:20.8	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
11:20.8	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
11:20.9	1784482	NULL	koly	camara	1530 heather howon circle	silver spring	7	1205	20904	REDACTED	REDACTED	NULL
06:58.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
53:16.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
48:03.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
09:48.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
50:07.0	1784482	REDACTED	NULL	NULL	NULL	NULL	NULL	NULL	NULL	REDACTED	NULL	NULL
18:31.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
55:25.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
6/25/2015 2:37	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	Y
24:21.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
38:26.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KOLY CAMARA,
Individually, on Behalf of All Others Similarly Situated, and on Behalf of the General Public of the District of Columbia

Plaintiff,

v.

MASTRO'S RESTAURANTS, LLC,

Defendant.

Case No. 1:18-cv-724 (JEB)

DECLARATION OF LAURA JASSO, DIRECTOR OF HUMAN RESOURCES

I, Laura Jasso, Director of HUMAN RESOURCES, based on my personal knowledge and pursuant to 28 U.S.C. § 1746 declare:

1. I am over the age of 18 and I have personal knowledge of the following facts.

2. I am the Director of Human Resources for Landry's Management, L.P. ("Landry's"), an affiliate of Defendant which provides various support functions to Defendant. Some examples of the administrative support functions that Landry's provides to Defendant are Human Resources, Payroll, Accounting, and Purchasing among others. As part of my job duties I am familiar with the policies and procedures of the Mastro's restaurant locations, including, but not limited to, those related to hiring employees, the on-boarding process, and the initial implementation of the arbitration agreement process. As such, I am familiar with the documentation given to and agreements executed by new hires and existing employees, as well as Defendant's maintenance of records and data regarding the same.

3. The document labeled "Exhibit A," attached hereto, is a true and correct copy of the Arbitration Agreement that Mastro's provided to all employees in June 2015, during Plaintiff

Koly Camara's employment with Mastro's.[1] The Arbitration Agreement states the parties' agreement that any legal claims arising from an employee's work with Defendant shall be resolved through arbitration and not in a court of law, and further, among other things, that no claims may be brought to arbitration on a class action or collective action basis.

4. As of June 2015, it has been Defendant's policy to require all employees to execute an Arbitration Agreement substantially identical to Exhibit A.

5. A true and correct copy of the company memorandum instructing all General Managers in how to administer the Arbitration Agreement program is attached as "Exhibit B."

6. To date, it remains Defendant's policy to require all employees to execute an Arbitration Agreement substantially identical to Exhibit A.[2]

7. To track compliance with the policy requiring that restaurants obtain Arbitration Agreements from all employees, Mastro's includes a field in our personnel section of the NBO system to designate if the employee has a signed agreement. This is the same system used to enter employee's information, such as address, tax withholding information, and similar information. This database is kept in the normal course of business and entries are made contemporaneous with an employee's execution of his or her individual Arbitration Agreement. Mastro's Arbitration Agreement compliance database shows that the Mastro's Washington, D.C. location affirmed that Plaintiff Koly Camara signed his individual Arbitration Agreement. Based on further details acquired from the compliance database, I can verify that the field corresponding to the arbitration agreement was changed on June 25, 2015. Attached as Exhibit

[1] Note that the Texas location, which opened in late 2017, has a different version of an arbitration agreement. The California locations have a form that is substantially similar to Exhibit "A" with some minor differences.
[2] As previously noted, the Texas employees sign a different form but the terms are substantially similar.

"C" is a true and correct printout and screenshot from the NBO system documenting Plaintiff Camara's execution of the Arbitration Agreement.

8. Defendant's compliance database shows that more than 500 employees holding the position of server between June 2015 and May 2018 executed an Arbitration Agreement substantially identical to Exhibit A.

I declare pursuant to 28 U.S.C. § 1746 and under penalty of perjury that the foregoing is true and correct.

DATED: June 14, 2018

By: _____
LAURA IASSO,
Director of Human Resources

EXHIBIT A

MUTUAL AGREEMENT TO ARBITRATE CLAIMS

In consideration of the at-will employment relationship between the Employer[1] and Employee and the mutual desire of the parties to enter into this Mutual Agreement to Arbitrate Claims ("Agreement"), the parties hereby agree that any and all disputes, claims or controversies between the parties, including but not limited to any dispute arising out of or relating to this Agreement, the employment relationship between the parties, or the formation or termination of the employment relationship, which are not resolved by their mutual agreement shall be resolved by final and binding arbitration by a neutral arbitrator. For purposes of this Agreement, Employer shall also include any claims that the Employee has against Employer and/or its officers, directors, employees, owners, shareholders, members, agents, representatives, benefit plans, sponsors, fiduciaries, agents, parents, subsidiaries, or affiliated entities, as well as claims the Employer has against the Employee, regardless of whether or not such claims arise during or after the termination of the employment relationship between the parties.

The claims covered by this Agreement include, but are not limited to, claims for: wrongful termination; breach of any contract or covenant, express or implied; breach of any duty owed to Employee by Employer or to Employer by Employee; personal, physical or emotional injury (excluding claims covered under any workers' compensation statute); discrimination or harassment because of race, gender, color, pregnancy, religion, national origin, ancestry, age, disability, medical condition, marital status, sexual orientation, gender identity or any other characteristic protected by applicable law; retaliation; violation of any local, state, or federal constitution, statute, law, ordinance or regulation; fraud, misrepresentation, defamation, invasion of privacy, and any other tort claims; wages, overtime, premiums, gratuities, tips, service/administrative charges, or any other compensation due; penalties; benefits; reimbursement of expenses; and any claim for trade secret violations or unlawful competition. This Agreement shall be binding on all of the parties, their heirs, and successors. This Agreement shall not apply to any dispute if an agreement to arbitrate such dispute is prohibited by law. The laws of the state of the Employee's place of employment shall govern this Agreement.

In arbitration, each side in the dispute presents its case, including evidence, to a neutral third party called an "arbitrator," rather than to a judge or jury. By signing this Agreement, the parties agree that any arbitration shall be conducted before one neutral arbitrator selected by the parties and shall be conducted under the JAMS Employment Arbitration Rules & Procedures ("JAMS Rules") then in effect. The arbitrator shall be either an attorney or a retired judge. *Employee may obtain a copy of the JAMS Rules by requesting a copy from Human Resources or by accessing the JAMS website at www.jamsadr.com*. **By signing this Agreement, Employee acknowledges that Employee has had an opportunity to review the JAMS Rules before signing this Agreement.** The parties agree that this Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq* ("FAA"). The parties also understand and agree that the Employer is engaged in transactions involving interstate commerce.

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[1] Your "Employer" is generally the entity that owns and operates the restaurant/business at which you work. The actual entity name of your employer can be found on your paychecks and W2 forms.

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I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS MUTUAL AGREEMENT TO ARBITRATE CLAIMS, THAT I UNDERSTAND ITS TERMS, AND THAT I HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY, WITHOUT UNDUE PRESSURE AND NOT IN RELIANCE ON ANY PROMISE OR REPRESENTATION BY THE EMPLOYER OR ANY PERSON OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EMPLOYEE	**EMPLOYER**
_____ (Print Name)	*Julia Liebelt* **By:** _____
_____ (Signature)	**Its: Vice President of Human Resources**
_____ (Date)	

NOTICE: Employer reserves the right to reject this Agreement if any changes are made by Employee.

EXHIBIT B

LANDRY'S
DINING • HOSPITALITY • ENTERTAINMENT • GAMING

Arbitration Agreement Rollout

To: **All Managers Excluding California and Texas Locations**

From: **Julie Liebelt, Vice President of Human Resources**

Date: **June 1, 2015**

RE: **Arbitration Agreement Rollout**

In an effort to help alleviate the significant cost and time associated with litigation, we will be implementing a Mutual Agreement to Arbitrate Claims ("Arbitration Agreement") which will apply to all hourly and salaried employees, excluding those in Texas and California. We believe arbitrating versus going through the court system is a much friendlier and efficient means of employees resolving any issues they may have related to their employment.

Roll Out/Existing Employees

1. Documents:
   - ✓ On Monday, June 1st, Arbitration Agreements in both English and Spanish will be delivered to each location.
   - ✓ Each location must run an active hourly employee report which will be used to track execution and return of hourly employees' signed Agreements.
   - ✓ A roster of all managers at your location will be emailed to you. You must use the list to track execution and return of the employees signed Agreements which must be sent to Human Resources for their personnel file.
   - ✓ Talking Points are attached. Use the talking points when discussing the Agreements with employees.

2. Review the Talking Points with employees and distribute a copy of the Agreement to all employees.
   - ✓ Let employees know that the Agreement should be signed, dated and returned to the General Manager no later than **June 30, 2015**. Employees may make a copy of the signed Agreement if they would like to keep it.
   - ✓ Designate a Spanish speaking employee at your location (preferably a manager) to discuss the Talking Points with Spanish speaking employees.

3. Upon receipt of signed Agreements:
   - ✓ Verify that the employee's name is written legibly above the signature line on the Agreement. If not, hand write the employee's name next to "Print Name" under the Employee section.
   - ✓ Write the date next to the employee's name on the manager roster, or the hourly report to show that you have received their Agreement.
   - ✓ For hourly employees, a required field has been added in NBO in order to track who has signed their Agreement (see attached for further instructions). This field will be mandatory for all new hires going forward.
   - ✓ Hourly employees' original signed Agreement must be placed in their employee file after it is entered into NBO.
   - ✓ For managers, scan and email the Agreements to Ashley Bentley at abentley@ldry,.com.
   - ✓ Note on the manager roster any employees who have terminated, and add any employees to the roster that may be missing and send it to Ashley Bentley at abentley@ldry,com with the signed manager Agreements.

New Hires

1. As a condition of employment, all new hires must sign the Arbitration Agreement.

2. In order to notify applicants that they will be required to sign an Arbitration Agreement as a condition of employment, the following verbiage has been added to Employment Applications:
   "*In certain states and/or jurisdictions, as a condition of employment, you will be required to sign an arbitration agreement. If you would like a copy of the arbitration agreement prior to commencement of employment, please ask a manager."*

3. The revised application will be available when you next order from Shop for Landry's. It is also on the Intranet under Forms/HR Application (note McCormick's has a separate application). You may continue to use your existing supply of applications, however you must print the attached "Application Supplement" to hand out

4. The new Arbitration Agreement will be included in new hire packets when you next order from Shop for Landry's. It is also included in the New Hire Paperwork (All Locations except CA and TX) on the Intranet under Forms/HR. **You may continue to use any new hire packets that you have on hand, but it is imperative that you also include the Arbitration Agreement with the current new hire packet until you order revised packets.**

Please contact Julie Liebelt at 713-386-7198 or Laura Jasso at 713-386-7187 with any questions.

Arbitration Agreement Tracking in NBO for Hourly Employees

A field in NBO will be used to track who has signed an Arbitration Agreement.

For the Initial Rollout

When an hourly employee returns their signed Agreement, the following should occur:

1. Note on the active employee report the date the employee returned their signed Agreement (this is used for tracking returned Agreements during the rollout).

2. In NBO, enter "Y" in the Arbitration Agreement field (under Employee Profile).

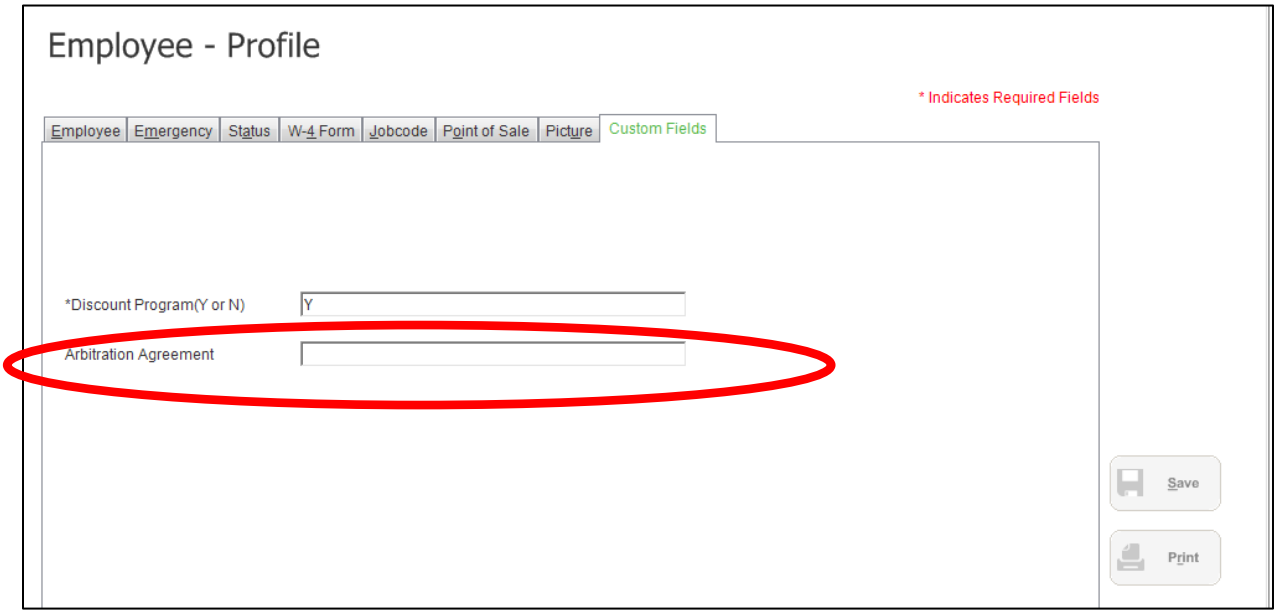
3. File the signed Agreement in the employee's personnel file.

For New Hires

Until you order revised new hire packets, you must give new hires the Arbitration Agreement to complete with their new hire packet on their first day of employment.

1. When entering the new hire in NBO, the Arbitration Agreement field will be a required field. Remember, all new hires **must** sign the Arbitration Agreement as a condition of employment. New hires may **not** begin training or perform any work prior to signing the Agreement. New hires who refuse to sign must be terminated and may not perform any work for the Company.

2. File the signed Agreement in the employee's personnel file along with their new hire paperwork.



Arbitration Agreement Talking Points

The below talking points are intended to assist managers with communication of the rollout to employees. If you are unable to answer employees' questions, please direct them to the Employee Hotline for assistance.

1. Per the Company's open door policy, we encourage employees to try to resolve disputes when they arise, using direct and open communications between employees and their supervisors and/or Human Resources. In keeping with the concept of an "open door", the Company has decided to establish an arbitration program for employees, which is detailed in the Mutual Agreement to Arbitrate Claims (the "Agreement"), in the event that an employee is unable to resolve a claim through their chain of command.

2. Similar to the standard litigation process, the arbitration process is a method of resolving disputes with the assistance of a neutral person (the Arbitrator). The selection of the Arbitrator will be agreed upon by both parties.

3. Employees are not giving up their rights to sue their employer (us), or hire a lawyer. Merely, the forum is different. The right to a fair and impartial outcome remains and employees still have the right to hire a lawyer to protect their rights. The Agreement does prevent employees from filing a **class action** lawsuit.

5. It has been our experience that class action lawsuits are rarely about the best interests of employees; instead, it's about enriching the lawyers who make more money on a class action than when representing only one employee in a lawsuit. This is often at the expense of the employees, who may only receive pennies on the dollar for their claims.

4. By signing the Agreement, Employees give up their right to a jury trial. The benefit of a one-on-one arbitration is that they are generally much less formal than a court trial, employees maintain their privacy, and get much faster results. Also, arbitrations can take place in a mutually agreeable conference space instead of a courtroom, allowing for a less intimidating setting for employees to pursue their claims.

5. Arbitration provides employees with an effective means of dispute resolution that is typically faster, easier and less expensive than litigating in court. As part of this process, direct and open communications are encouraged to try and quickly determine the issues and resolve them.

6. Many lawsuits can drag on for long periods of time, including two or three years, if not more. Arbitrations allow the parties to by-pass the long litigation process and proceed efficiently to resolve the issue for both parties in a shorter time period.

7. As part of the Agreement, Employees can still raise the same individual claims as they are allowed to raise in a court case.

8. The Mutual Agreement to Arbitrate Claims is a binding legal document and should be read carefully before signing.

The Arbitration Agreement references the JAMS Employment Arbitration Rules & Procedures ("JAMS Rules") and states that an employee *may obtain a copy of the JAMS Rules by requesting a copy from Human Resources or by accessing the JAMS website at www.jamsadr.com*. As part of the initial roll-out, we have provided a copy of the current JAMS Rules (attached). You may provide a copy of the rules to employees if they request a copy and/or have questions. However, because JAMS may change their rules from time to time, after this initial roll-out, please direct new employees to Human Resources or the JAMS website, as directed in the Agreement. Also, if an employee would like a copy of the Arbitration Agreement, you should provide them a copy.

Application Supplement

In certain states and/or jurisdictions, as a condition of employment, you will be required to sign an arbitration agreement. If you would like a copy of the arbitration agreement prior to commencement of employment, please ask a manager.

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In consideration of the at-will employment relationship between the Employer[1] and Employee and the mutual desire of the parties to enter into this Mutual Agreement to Arbitrate Claims ("Agreement"), the parties hereby agree that any and all disputes, claims or controversies between the parties, including but not limited to any dispute arising out of or relating to this Agreement, the employment relationship between the parties, or the formation or termination of the employment relationship, which are not resolved by their mutual agreement shall be resolved by final and binding arbitration by a neutral arbitrator. For purposes of this Agreement, Employer shall also include any claims that the Employee has against Employer and/or its officers, directors, employees, owners, shareholders, members, agents, representatives, benefit plans, sponsors, fiduciaries, agents, parents, subsidiaries, or affiliated entities, as well as claims the Employer has against the Employee, regardless of whether or not such claims arise during or after the termination of the employment relationship between the parties.

The claims covered by this Agreement include, but are not limited to, claims for: wrongful termination; breach of any contract or covenant, express or implied; breach of any duty owed to Employee by Employer or to Employer by Employee; personal, physical or emotional injury (excluding claims covered under any workers' compensation statute); discrimination or harassment because of race, gender, color, pregnancy, religion, national origin, ancestry, age, disability, medical condition, marital status, sexual orientation, gender identity or any other characteristic protected by applicable law; retaliation; violation of any local, state, or federal constitution, statute, law, ordinance or regulation; fraud, misrepresentation, defamation, invasion of privacy, and any other tort claims; wages, overtime, premiums, gratuities, tips, service/administrative charges, or any other compensation due; penalties; benefits; reimbursement of expenses; and any claim for trade secret violations or unlawful competition. This Agreement shall be binding on all of the parties, their heirs, and successors. This Agreement shall not apply to any dispute if an agreement to arbitrate such dispute is prohibited by law. The laws of the state of the Employee's place of employment shall govern this Agreement.

In arbitration, each side in the dispute presents its case, including evidence, to a neutral third party called an "arbitrator," rather than to a judge or jury. By signing this Agreement, the parties agree that any arbitration shall be conducted before one neutral arbitrator selected by the parties and shall be conducted under the JAMS Employment Arbitration Rules & Procedures ("JAMS Rules") then in effect. The arbitrator shall be either an attorney or a retired judge. *Employee may obtain a copy of the JAMS Rules by requesting a copy from Human Resources or by accessing the JAMS website at www.jamsadr.com*. **By signing this Agreement, Employee acknowledges that Employee has had an opportunity to review the JAMS Rules before signing this Agreement.** The parties agree that this Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq* ("FAA"). The parties also understand and agree that the Employer is engaged in transactions involving interstate commerce.

The arbitration shall take place within 25 miles from where Employee worked for the Employer. The parties are entitled to be represented by their own legal counsel in the arbitration proceeding and agree to maintain the proceedings and the award, including the hearing, as confidential, except as is otherwise required by court order, required by law, or as is necessary to confirm, vacate or enforce the award. The arbitrator shall have the authority to order such discovery by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary for a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration. The arbitrator is authorized to award any remedy or relief available under applicable law that the arbitrator deems just and equitable, including any remedy or relief that would have been available to the parties had the matter been heard in a court. Nothing in this Agreement shall prohibit or limit the parties from seeking provisional remedies, such as injunctive relief from a court of competent jurisdiction. The arbitrator shall have the authority to provide for the award of attorney's fees if such award is separately authorized by applicable law. The Employer shall pay all arbitrators' fees and any JAMS arbitration administrative expenses. The decision of the arbitrator shall be in writing and shall provide the reasons for the award unless the parties agree otherwise. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. **The arbitrator's decision is final and binding which means there will be no trial by a judge or jury, or ability to appeal the arbitrator's decision except as provided by the FAA or analogous state law.**

This Agreement may only be amended by a signed writing executed by Employer and Employee. The terms of this Agreement control over any prior or subsequent oral discussions you may or have had with an Employer representative about arbitration.

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[1] Your "Employer" is the entity that owns and operates the restaurant/business at which you work. The actual entity name of your employer can be found on your paychecks and W2 forms.

BY SIGNING THIS AGREEMENT, THE PARTIES HEREBY WAIVE THEIR RIGHT TO HAVE ANY DISPUTE, CLAIM OR CONTROVERSY DECIDED BY A JUDGE OR JURY IN A COURT.

BY SIGNING THIS AGREEMENT, THE EMPLOYER AND EMPLOYEE AGREE THAT EACH MAY BRING AND PURSUE CLAIMS AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITIES, AND MAY NOT BRING, PURSUE OR ACT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR COLLECTIVE PROCEEDING.

THE PARTIES FURTHER AGREE THAT NEITHER PARTY MAY BRING, PURSUE, OR ACT AS A PLAINTIFF OR REPRESENTATIVE IN ANY PURPORTED REPRESENTATIVE PROCEEDING OR ACTION, OR OTHERWISE PARTICIPATE IN ANY SUCH REPRESENTATIVE PROCEEDING OR ACTION OTHER THAN ON AN INDIVIDUAL BASIS EXCEPT TO THE EXTENT THIS PROVISION IS UNENFORCEABLE AS A MATTER OF LAW.

THE PARTIES AGREE THAT A COURT, NOT THE ARBITRATOR, SHALL DETERMINE WHETHER ANY CLAIMS MUST PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS.

THE PARTIES AGREE THAT ANY REPRESENTATIVE CLAIMS THAT ARE FOUND NOT SUBJECT TO ARBITRATION UNDER THIS AGREEMENT SHALL BE RESOLVED IN COURT AND ARE STAYED PENDING THE OUTCOME OF THE ARBITRATION.

In the event that any provision of this Agreement is held to be void, null or unenforceable, the remaining portions shall remain in full force and effect. If Employee has any questions about this Agreement or wishes to have any of its terms explained, Employee may ask Human Resources (1-800-394-3839). Employee may also wish to consult an attorney about the pros and cons of this Agreement.

The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.

Should Employee work for more than one Employer and/or transfer to a new Employer, this Agreement shall remain valid and enforceable as to all Employers for whom Employee has worked. This Agreement shall survive termination of any employment relationship between Employee and any Employer.

I ACKNOWLEDGE THAT BEFORE I SIGNED THIS AGREEMENT I HAVE HAD AN OPPORTUNITY TO ASK QUESTIONS CONCERNING IT. I UNDERSTAND THAT I AM PERMITTED TO TAKE THIS AGREEMENT WITH ME AND REVIEW IT WITH AN ATTORNEY OF MY CHOICE IF I SO DESIRE. I FURTHER UNDERSTAND THAT I MUST SIGN THIS AGREEMENT BEFORE I MAY BEGIN OR CONTINUE MY EMPLOYMENT WITH THE EMPLOYER.

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS MUTUAL AGREEMENT TO ARBITRATE CLAIMS, THAT I UNDERSTAND ITS TERMS, AND THAT I HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY, WITHOUT UNDUE PRESSURE AND NOT IN RELIANCE ON ANY PROMISE OR REPRESENTATION BY THE EMPLOYER OR ANY PERSON OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EMPLOYEE	**EMPLOYER**
_____ (Print Name)	*Julia Liebelt* **By:** _____
_____ (Signature)	**Its: Vice President of Human Resources**
_____ (Date)	

NOTICE: Employer reserves the right to reject this Agreement if any changes are made by Employee.

EXHIBIT C

TransactionTime	EmployeeNumber	SSN	NewFirstName	NewLastName	NewAddress1	NewCity	NewStateI	NewCount	NewPostalCode	NewSSN	NewPhone	NewCustomField4
11:20.8	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
11:20.8	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
11:20.8	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
11:20.9	1784482	NULL	koly	camara	1530 heather howon circle	silver spring	7	1205	20904	REDACTED	REDACTED	NULL
06:58.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
53:16.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
48:03.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
09:48.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
50:07.0	1784482	REDACTED	NULL	NULL	NULL	NULL	NULL	NULL	NULL	REDACTED	NULL	NULL
18:31.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
55:25.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
6/25/2015 2:37	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	Y
24:21.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL
38:26.0	1784482	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL	NULL

Employee - Profile

* Indicates Required Fields

Employee | Emergency | Status | W-4 Form | Jobcode | Point of Sale | Picture | Custom Fields

General Information

*SSN: ********* Employee ID: 1784482 *Hire: 3/18/2015

*First: Koly Middle: *Last: Camara

*Birth: 4/30/1980 *Gender: M Former Name:

Contact Information

*Address: 1530 Heather howon circle

Apt/Ste:

*City: Silver spring *State: MD

*Zip: 20904 *County: MON

Phone: (301) 613-1278

Alternate Phone: ( ) -

Email Address:

Other Information

*Ethnic: Black or African American (Not Hispanic or Latino)

*Marital Status: Single

Employee - Profile

* Indicates Required Fields

Employee | Emergency | Status | W-4 Form | Jobcode | Point of Sale | Picture | Custom Fields

*Discount Program(Y or N) y

*Arbitration Agreement Y

ADP Proxy ID

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KOLY CAMARA
Individually, on Behalf of All Others Similarly Situated, and on Behalf of the General Public of the District of Columbia,

Plaintiff,

v.

MASTRO'S RESTAURANTS LLC,

Defendant.

Civil Action No. 1:18-cv-724 (JEB)

ORDER

UPON CONSIDERATION of the Defendant's Motion to Compel Arbitration and Dismiss, and Memorandum of Points and Authorities in Support, and any opposition thereto, it is this ___ day of _____, 2018, the Court ORDERS that:

1. Defendant's Motion to Compel Arbitration and Dismiss IS granted;
2. Plaintiff may pursue his claims against Defendant only in arbitration; and
3. This case is DISMISSED.

IT IS SO ORDERED.

_____
Date

_____
JAMES E. BOASBERG
United States District Court Judge