IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

JEFFREY J. PICCOLO, as Personal Representative of the ESTATE OF KANOKPORN TANGSUAN, deceased,

Plaintiff,

vs.

GREAT IRISH PUBS FLORIDA, INC., a Florida corporation d/b/a RAGLAN ROAD IRISH PUB AND RESTAURANT and WALT DISNEY PARKS AND RESORTS U.S., INC., a Florida corporation d/b/a DISNEY SPRINGS,

Defendants.
_____ /

CIRCUIT CIVIL DIVISION

CASE NO.: 2024-CA-001616-O

DEFENDANT WALT DISNEY PARKS AND RESORTS U.S., INC.'S
MOTION TO COMPEL ARBITRATION AND STAY CASE

Defendant Walt Disney Parks and Resorts U.S., Inc. ("WDPR"), under the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), moves for an order: (1) compelling Plaintiff Jeffrey Piccolo, as Personal Representative of the Estate of Kanokporn Tangsuan, to arbitrate all claims against WDPR; and (2) staying this action pending arbitration.

INTRODUCTION

This case involves an allergic reaction the decedent allegedly experienced after dining at a restaurant called Raglan Road Irish Pub and Restaurant, located in Disney Springs. Raglan Road is owned and operated by Defendant Great Irish Pubs Florida, Inc. WDPR leases the property to Great Irish Pubs. The Complaint alleges an agency relationship between landlord and tenant. But the only facts supporting this theory are "representations" about Raglan Road's "allergen free food" on the Walt Disney World website. Piccolo alleges that he relied on the website in choosing

to dine at Raglan Road. But Piccolo ignores that he previously created a Disney account and agreed to arbitrate "all disputes" against "The Walt Disney Company or its affiliates" arising "in contract, tort, warranty, statute, regulation, or other legal or equitable basis." This broad language covers Piccolo's claims against WDPR. Because the parties agreed to arbitrate these claims, the Court should compel arbitration and stay the proceedings.

BACKGROUND

In February 2024, Piccolo filed this action alleging that the decedent suffered an allergic reaction while dining at Raglan Road. The four-count Complaint alleges negligence as to both Defendants (Counts I and II) and separate claims against WDPR alleging agency (Count III) and apparent agency (Count IV) (Compl. ¶¶ 37, 44, 53, 59). Piccolo alleges that he relied on allergy-related acknowledgements, representations, and advertisements about Raglan Road on WDPR's "website" (*see id.* ¶¶ 13-15, 19, 62-63, 66-68). The website displays Raglan Road's menu, which includes the alleged representations.[1] Before eating at Raglan Road Piccolo created a Disney account. *See* Declaration of Sami Morgan, dated May 31, 2024 ("Morgan Decl.") ¶¶ 5-6; Declaration of Peter Streit dated May 31, 2024 ("Streit Decl.") ¶ 7. And purchased park tickets with that account *before* dining at Raglan Road. *See* Declaration of Zachary Varnes dated May 31, 2024 ("Varnes Decl.") ¶¶ 3-4. In the process, Piccolo agreed to the Disney Terms, which include a binding arbitration clause (Streit Decl. ¶ 7); (Morgan Decl. ¶ 14).

[1] The alleged statements appear on both www.disneyworld.disney.go.com and www.disneysprings.com.

1. Piccolo Accepted the Disney+ Subscriber Agreement

In November 2019, Piccolo initially created a Disney account through the Disney+ website (Streit Decl. ¶ 6); (Morgan Decl. ¶ 5).[2] Piccolo completed the registration webform by providing personal information, including his email address, and created a password (*see* Morgan Decl. ¶ 6). Before registering the account, Piccolo had to select "Agree & Continue" (*id.*). Immediately above was a disclosure notifying Piccolo that "[b]y clicking Agree & Continue, you agree to our Subscriber Agreement" (*id.*). Piccolo then selected "Agree and Continue" (*id.*). The term "Subscriber Agreement" was underlined in blue font and provided a hyperlink directly to the document (Morgan Decl. ¶¶ 6-7). Piccolo also agreed to the Disney Terms of Use (Streit Decl. ¶ 7). Piccolo could not have created a Disney account without doing so.

2. The Terms of Use Contain a Binding Arbitration Provision

The Terms of Use, which were provided with the Subscriber Agreement, include a binding arbitration clause. The first page of the Subscriber Agreement states, in all capital letters, that "any dispute between You and Us, Except for Small Claims, is subject to a class action waiver and must be resolved by individual binding arbitration" (Morgan Decl. Ex. A at 1). The Subscriber Agreement also states, in the same font, that: "when you create a Disney+ or ESPN+ account, you also agree to the Walt Disney Company's Terms of Use, available at www.disneytermsofuse.com and at the end of this agreement which govern your use of other Disney Services" (*id.*).

The Terms of Use include an arbitration clause in Section 7 – titled "Binding Arbitration and Class Action Waiver" – which applies to "all disputes" including those involving "The Walt

[2] The Subscriber Agreement, Terms of Use, and Terms and Conditions (together "Disney Terms") were in effect when Piccolo created a Disney account and purchased park tickets (Morgan Decl. ¶¶ 8, 13); (Varnes Decl. ¶¶ 3-4); (Streit Decl. ¶¶ 10-11).

Disney Company or its affiliates" (Morgan Decl. Ex. B at ¶ 7). WDPR is an affiliate of The Walt Disney Company (Morgan Decl. ¶ 10). The binding arbitration clause provides, in relevant part:

> PROCEEDINGS TO RESOLVE OR LITIGATE A DISPUTE IN ANY FORUM WILL BE CONDUCTED ON AN INDIVIDUAL BASIS. Neither you nor Disney DTC will seek to have a dispute heard as a class action or private attorney general action or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding can be combined with another without the prior written consent of all parties to the arbitrations or proceedings. You and Disney DTC agree to arbitrate, as provided below, *all disputes* between you (*including any related disputes involving The Walt Disney Company or its affiliates*), that are not resolved informally, except disputes relating to the ownership or enforcement of intellectual property rights. *"Dispute" includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us concerning the Disney Services or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis.*

(*id.* ¶ 14) (emphasis added). The Terms of Use define "Disney Services" as "sites, software, applications, content, products and services" (Morgan Decl. Ex. B at 1). This includes WDPR's website.

The arbitration clause also provides that the FAA governs the arbitrability of all disputes and "empower[s] the arbitrator with the *exclusive authority* to resolve *any dispute* relating to the *interpretation, applicability or enforceability of these terms or the formation of this contract*, including *the arbitrability of any dispute and any claim* that all or any part of this Agreement are void or voidable" (*id.* ¶ 7) (emphasis added). The Terms of Use include a No Waiver clause stating that the "failure to assert any right or provision" will "not constitute a waiver" (*id.* at 14).

3. <u>The My Disney Experience Terms and Conditions</u>

Then, in September 2023, Piccolo also agreed to the My Disney Experience Terms and Conditions (Streit Decl. ¶ 9). At that point, Piccolo had agreed to the Terms of Use (*id.* ¶ 7) Piccolo logged into his Disney account (*id.* ¶¶ 7-9). After entering the email address used to create his Disney account, Piccolo was prompted to "review & accept Walt Disney World terms" (*id.* ¶

8). The webform included a checkbox that states, "I have read and agree to the My Disney Experience Terms and Conditions" (Streit Decl. ¶ 8). Piccolo selected the checkbox and "Agree & Continue" directly below the disclosure (*id.* ¶¶ 8-9). The Terms and Conditions were underlined in blue font and provided a hyperlink directly to the document (*id.*). Piccolo could not have completed the login without agreeing to the Terms and Conditions and Terms of Use.

The Terms and Conditions explain that "[b]y using the Site/App or by clicking a box that states that you accept or agree to the My Disney Experience Terms and Conditions, you signify your agreement to these Terms for *yourself and for all persons* (including minors) *for whom you are purchasing or otherwise securing benefits and/or managing those benefits and entitlements such as tickets* . . . . You represent that *you have all necessary rights and consents to agree to these Terms on behalf of your Party*" (Streit Decl. Ex. C at 1) (emphasis added). The Terms and Conditions "apply in addition to, and not in lieu of, the Disney Terms of Use" (*id.*). After agreeing to the Terms and Conditions, Piccolo purchased park tickets and registered the decedent as his "guest" (Varnes Decl. ¶¶ 1-4). Piccolo could not have completed the purchase without agreeing to the Disney Terms.

ARGUMENT

I. THE FAA MANDATES ARBITRATION OF PICCOLO'S CLAIMS

Under the FAA, courts must compel arbitration upon a showing that: "(1) a valid, written agreement to arbitrate exists; (2) an arbitrable issue exists; and (3) the right to arbitration has not been waived." *See Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013); *Lambert v. Austin Ind.*, 544 F.3d 1192, 1195 (11th Cir. 2008).[3] WDPR satisfies these requirements.

[3] The Disney Terms are governed under "New York" law and "the laws of the United States" (Streit Decl. Ex. D at 14). But there is no meaningful difference between Florida and New York law on these issues. *See Worthington v. JetSmarter, Inc.*, 2019 WL 4933635, at *4 (S.D.N.Y. Oct.

First, the Disney Terms amount to a valid and enforceable "clickwrap agreement"— which required Piccolo to assent by selecting "agree and continue" before proceeding. Florida courts recognize such agreements. Second, the Disney Terms delegate all issues of arbitrability to the arbitrator. This means that the arbitrator determines nearly all challenges to an arbitration provision, including its scope and enforceability. Finally, WDPR has not waived the right to compel arbitration since it has barely participated in litigation. We explain each of these points below.

A. <u>Piccolo Agreed to Binding Arbitration Under the Disney Terms</u>

In addressing a motion to compel arbitration under the FAA, the Court must first determine "if a valid arbitration agreement exists" between the parties. *Robinson v. Anytime Rentals, Inc.*, 2016 WL 7448178, at *1 (M.D. Fla. Mar. 17, 2016). Florida state law governs the formation inquiry. *Parks IP Law, LLC v. Wood*, 755 F. App'x 884, 886 (11th Cir. 2018) (citation omitted). In Florida, to determine whether a valid arbitration agreement exists, "courts resort to traditional rules of contract interpretation." *Wallshein v. Shugarman*, 50 So. 3d 89, 90 (Fla. 4th DCA 2010).

Piccolo cannot credibly dispute that a valid arbitration agreement exists. Piccolo entered into a "clickwrap" agreement by selecting both a "checkbox" and "agree and continue" to create a Disney account (Morgan Decl. ¶¶ 5-6). And again when logging into the account in September 2023 (Streit Decl. ¶¶ 7-9). Clickwrap agreements are enforceable because they "require the user to physically manifest assent," and supply "inquiry notice of the terms agreed to." *Temple v. Best Rate Holdings LLC*, 360 F. Supp. 3d 1289, 1302 (M.D. Fla. 2018); *Massage Envy Franchising, LLC v. Doe*, 339 So. 3d 481, 484 (Fla. 5th DCA 2022) (compelling arbitration because plaintiff

7, 2019); *Falcon v. TelevisaUnivision Digit., Inc.*, 2024 WL 1492831, at *2 n.2 (M.D. Fla. Mar. 29, 2024).

selected "I agree and assent to the Terms of Use Agreement"); *see also Citgo Petroleum Corp. v. Fla. E. Coast Ry. Co.*, 706 So. 2d 383, 386 (Fla. 4th DCA 1998) (explaining that a party is on "inquiry notice" when it learns facts that "should reasonably suggest inquiry" and actual notice "would have been discovered upon a reasonable inquiry") (citation omitted).

Piccolo also received inquiry notice of the Disney Terms, including the agreement to arbitrate potential claims, through disclosures and hyperlinks. First, when creating the Disney account he was notified that "[b]y clicking Agree & Continue, you agree to our Subscriber Agreement" (Morgan Decl. ¶ 6). Piccolo affirmed by selecting "Agree and Continue" (*id.* ¶¶ 4-6). And Piccolo also agreed to the Terms of Use (Streit Decl. ¶ 7).

Then, in September 2023, Piccolo agreed to the Terms and Conditions (*id.* ¶¶ 8-9). After Piccolo logged into his Disney account he was prompted to "review & accept Walt Disney World terms" (*id.* ¶ 8). He also selected a checkbox confirming "I have read and agree to the My Disney Experience Terms and Conditions" (*id.*). Piccolo then selected "Agree & Continue" directly below the disclosure (Streit Decl. ¶¶ 7-8). Piccolo was presented with blue hyperlinks to the Subscriber Agreement, Terms of Use, and Terms and Conditions (*id.*); (Morgan Decl. ¶¶ 6, 7, 12).

The Disney account and Disney+ registration page, the clear hyperlinks to the Disney Terms, and the fact that Piccolo could not move forward in the registration process without selecting "Agree and Continue" are design features that track the factors outlined in cases upholding clickwrap agreements. *See Falcon*, 2024 WL 1492831, at *2 (compelling arbitration because the user needed to click to continue using the website and the hyperlinks were conspicuous enough to provide "inquiry notice"); *Valiente v. StockX, Inc.*, 645 F. Supp. 3d 1331, 1338 (S.D. Fla. 2022) (enforcing an arbitration agreement because to create an account the plaintiff "needed to affirmatively click a box indicating that he agreed to Defendant's Terms and Privacy Policy");

Barney v. Grand Caribbean Cruises, Inc., 2022 WL 159567, at *5 (S.D. Fla. Jan. 17, 2022) (same).

Whether Piccolo actually reviewed the Disney Terms is also immaterial. These clickwrap agreements, like the Disney Terms, provide users with inquiry notice. *See Kravets v. Anthropologie, Inc.*, 2022 WL 1978712, at *4 (S.D. Fla. June 3, 2022) ("bold and underlined links" above the "continue" button provided inquiry notice); *Arencibia v. AGA Serv. Co.*, 533 F. Supp. 3d 1180, 1189-90 (S.D. Fla. 2021) (explaining plaintiff had inquiry notice because hyperlink was "located right below the offer"); *MetroPCS Communs., Inc. v. Porter*, 273 So. 3d 1025, 1029 (Fla. 3d DCA 2018) (finding online arbitration clause was binding because "a reasonably prudent user would be on inquiry notice") (citation omitted).

This conclusion is strengthened because Piccolo kept using WDPR's website and purchased tickets *after* receiving the Disney Terms. Under Florida law, valid contracts are also formed by a party continuing to use services. *See Integrated Health Servs. of Green Briar v. Lopez-Silvero*, 827 So. 2d 338, 339 (Fla. 3d DCA 2002) (holding that a nursing home contract with an arbitration clause was valid, even though it was unsigned, because the plaintiff assented to its terms by performance); *Rivera v. AT&T Corp.*, 420 F. Supp. 2d 1312, 1320-21 (S.D. Fla. 2006) (enforcing an arbitration provision because consumers were sent service agreements and continued using the service despite denying receiving arbitration agreement); *Sultanem v. Bright House Networks, L.L.C.*, 2012 WL 4711963, at *2 (M.D. Fla. Oct. 3, 2012) (same).

For all these reasons, a valid arbitration agreement exists.

B. <u>The Disney Terms Delegate Arbitrability Issues to the Arbitrator</u>

In deciding whether to compel arbitration, a court must next determine whether an arbitrable issue exists. *See Jackson*, 108 So. 3d at 593. The Court must defer to "federal substantive law" when construing a contract under the FAA. *GLF Constr. Corp. v. Recchi-GLF*, 821 So. 2d 372, 373-74 (Fla. 1st DCA 2002); *Gilman + Ciocia, Inc. v. Wetherald*, 885 So. 2d 900,

903 (Fla. 4th DCA 2004) ("Florida courts are obligated to enforce valid arbitration agreements within the scope of the FAA, even if such agreements would otherwise be unenforceable under Florida law."). But before analyzing whether Piccolo's claims fall within the scope of the arbitration clause, the Court must decide whether the parties delegated that responsibility to the arbitrator. When "clear and unmistakable evidence" shows that the parties agreed that an arbitrator would decide issues of arbitrability, such provisions must be enforced. *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010) ("parties can agree to arbitrate gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy") (cleaned up). Indeed, the United States Supreme Court has explained that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract" and "possesses no power to decide the arbitrability issue." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). Florida courts regularly enforce delegation provisions. *See ATP Flight Sch., LLC v. Sax*, 44 So. 3d 248, 253 (Fla. 4th DCA 2010) ("arbitration agreements which delegate authority to the arbitrator to resolve disputes relating to enforceability of the agreement are valid under the FAA").

Piccolo agreed to delegate arbitrability issues to the arbitrator. The Disney Terms delegate to the arbitrator—not to a court—"exclusive authority" to resolve "any dispute relating to" the arbitration clause's "interpretation, applicability or enforceability" (Morgan Decl. Ex. B at ¶ 7) and whether "any part" is "void or voidable" (*id.*). It is hard to imagine a more expansive delegation clause. *See Rent-A-Center*, 561 U.S. at 66, 69 (enforcing a clause granting arbitrators "exclusive authority to resolve any dispute relating to . . . interpretation, applicability, enforceability or formation"); *Jones v. Waffle House, Inc.*, 866 F.3d 1257, 1263, 1267 (11th Cir. 2017) (finding the requisite "clear and unmistakable" intent where parties delegated to the

arbitrators any dispute "relating to the interpretation, applicability, enforceability or formation").

The Disney Terms also incorporate the "JAMS Rules," which provide that "[j]urisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement . . . be submitted to and ruled on by the Arbitrator" JAMS Rule 11(b).[4] The language is "clear and unmistakable" and unequivocally delegates the question of arbitrability to the arbitrator, not the court. *Work v. Intertek Resource Sols., Inc.*, 2024 WL 2716871, at *3 (5th Cir. May 28, 2024); *Scharf v. Bitwarden, Inc.*, 2024 U.S. Dist. LEXIS 59664, at *28 (M.D. Fla. Feb. 9, 2024) (same).

Even without the delegation clause, Piccolo's claims are subject to arbitration under the Disney Terms. "Whether a claim falls within the scope of an arbitration agreement turns on the factual allegations in the complaint rather than the legal causes of action asserted." *Gregory v. Electro- Mech. Corp.*, 83 F.3d 382, 384 (11th Cir. 1996); *see also Jea v. Zahn*, 326 So. 3d 790, 793 (Fla. 1st DCA 2021) ("It is the facts of a complaint which determine arbitrability of the claims therein, not the legal title ascribed to any count."). And unless "the arbitration clause is not susceptible of an interpretation that covers the asserted dispute," enforcement is proper. *IBEW Sys. Council U-4 v. Fla. Power & Light Co.*, 627 F. App'x 898, 901 (11th Cir. 2015) (citation omitted).

The arbitration provision covers "all disputes" including "disputes involving The Walt Disney Company or its affiliates" (Morgan Decl. Ex. B at ¶ 7). Because the term "Dispute" includes claims related to WDPR's "website," Piccolo's negligence and agency counts fall within the arbitration agreement. *See Gregory*, 83 F.3d at 286 (explaining that if the allegations "touch

[4] *See* JAMS Comprehensive Arbitration Rules and Procedures, www.jamsadr.com/rules-comprehensive-arbitration/.

matters covered by" the parties' agreement to arbitrate, "then those claims must be arbitrated, whatever the legal labels attached to them") (citation omitted); *Hicks v. Comcast Cable Communs.*, 2019 WL 5208849, at *7 (S.D. Fla. Mar. 27, 2019) ("tort and breach of contract claims . . . are subject to a broad arbitration provision requiring arbitration of 'any dispute' between the parties"); *Newco Energy Acquisitions Holdings, LLC v. Shulgen*, 2013 WL 12149763, at *4 (S.D. Fla. Mar. 27, 2013) (compelling arbitration where a clause applied to "any dispute or controversy" arising out of the parties' agreement which included pending tort claims).

C. <u>WDPR Has Not Waived It's Right to Arbitrate</u>

Finally, a court deciding whether to compel arbitration must consider whether the right to arbitrate has been waived. *See Jackson*, 108 So. 3d at 593. When interpreting arbitration agreements under the FAA, waiver is controlled solely by federal law. *See Amargos v. Verified Nutrition, LLC*, 653 F. Supp. 3d 1269, 1274-75 (S.D. Fla. 2023); *see also GLF Constr. Corp.*, 821 So. 2d at 373-74 (explaining that federal law determines waiver).

WDPR has not waived its right to arbitrate. Waiver "is the intentional relinquishment or abandonment of a known right." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 416 (2022). To find waiver, a party must "substantially invoke[] the litigation machinery prior to demanding arbitration." *Grigsby & Assocs. v. M Sec. Inv.*, 635 F. App'x 728, 731 (11th Cir. 2015). Because federal law favors arbitration, waiver arguments require "a heavy burden of proof." *Burch v. P.J. Cheese, Inc.*, 861 F.3d 1338, 1351 (11th Cir. 2017); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 626 (1985) (explaining that under the FAA "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability") (citation omitted).

WDPR has certainly not waived its right to arbitrate this matter. About three months have passed since Piccolo filed this lawsuit. During that time, WDPR has answered the Complaint, amended that answer by right without leave of court, and requested copies. WDPR has not propounded discovery or sought affirmative relief. In cases with even more litigation activity, courts have declined to find waiver. *See Hodgson v. Royal Caribbean Cruises, Ltd.*, 706 F. Supp. 2d 1248, 1257-58 (S.D. Fla. 2009) (finding no waiver where, before moving to compel arbitration the defendant moved to dismiss, served discovery requests, and responded to plaintiff's requests; and when its motion was denied, the defendant answered the complaint); *Pierre-Louis v. CC Sols., LLC*, 2017 WL 4841428, at *10 (S.D. Fla. Oct. 25, 2017) (finding no wavier even after defendant filed its answer, served initial disclosures, and moved to compel arbitration nearly four months after suit was filed); *see also Hill v. Ray Carter Auto Sales, Inc.*, 745 So. 2d 1136, 1137-38 (Fla. 1st DCA 1999) (finding no waiver after the defendant filed an answer and propounded discovery two months before exercising its arbitration rights).

Even if WDPR had actively litigated the case, the Disney Terms also include a No Waiver clause which states that "[WDPR's] failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision" (Morgan Decl. Ex. B at 14). Florida courts have consistently enforced anti-waiver clauses. *Nat'l Home Comtys. L.L.C. v. Friends of Sunshine Key, Inc*., 874 So. 2d 631, 634 (Fla. 3d DCA 2004) (citing *Rybovich Boat Works, Inc. v. Atkins,* 587 So. 2d 519 (Fla. 4th DCA 1991) (collecting cases)); *Gergora v. Flynn,* 486 So. 2d 5, 6 (Fla. 3d DCA 1986); *Raimondi v. I.T. Chips, Inc.,* 480 So. 2d 240, 242 (Fla. 4th DCA 1985). As stated in *Rybovich Boat Works,* the "defenses of waiver and estoppel [are] defeated as a matter of law by the [anti-waiver] provisions of the contract itself." 587 So. 2d at 522.

II. THE COURT SHOULD STAY THE PROCEEDINGS PENDING ARBITRATION

Under Section 3 of the FAA, in any lawsuit "referable to arbitration," the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3. Because the arbitration clause covers Piccolo's claims against WDPR, the Court must stay this action as to WDPR. *See Caley v. Gulfstream Aero. Corp.*, 428 F.3d 1359, 1368 (11th Cir. 2005) ("the FAA's enforcement sections require a court to stay a proceeding where the issue in the proceeding is referable to arbitration under an agreement") (cleaned up); *Suarez-Valdez v. Shearson Lehman/Am. Express, Inc.*, 858 F.2d 648, 649 (11th Cir. 1988) (same).

Likewise, Piccolo's remaining claims against Great Irish Pubs should be stayed as well. When a case presents "both arbitrable and nonarbitrable claims, courts have discretion to stay nonarbitrable claims." *Abousamak v. Buckhead Life Rest. Grp. Inc.*, 2022 U.S. Dist. LEXIS 195070, at *3-4 (S.D. Fla. Oct. 25, 2022) (citation omitted). In doing so, courts have considered: "(1) the expense and inconvenience of parallel litigation, (2) the possibility of inconsistent determinations, and (3) whether arbitrable and nonarbitrable claims arise out of the same set of facts." *VPNetworks, LLC v. Collective 7, Inc.*, 2020 WL 13227751, at *5 (M.D. Fla. June 10, 2020) (cleaned up). These considerations support staying the entire case.

There's no question that Piccolo's claims against WDPR and Great Irish Pubs involve the same facts (*see* Compl. ¶¶ 18-36). Piccolo's Complaint amounts to a "shotgun pleading." *See, e.g., Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002) (explaining that a "shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors"). Indeed, each count incorporates the *entire* preceding fact section by reference (*see* Compl. ¶¶ 37, 44, 53, 59). And Piccolo's agency claims

against WDPR are based entirely on Great Irish Pubs's alleged misconduct (*see id.* ¶¶ 53-71). Because the factual and legal questions are intertwined, entering a stay during arbitration is warranted. *See Hinton v. Turning Point Brands, Inc.*, 2020 WL 13369052, at *8 (S.D. Fla. Nov. 16, 2020) (granting stay because overlapping claims involved "common questions of fact"); *Murdock v. Santander Consumer USA Inc.*, 2016 WL 3913135, at *2 (M.D. Fla. July 20, 2016) (staying case where claims against two defendants were "commingled with the facts and circumstances being litigated in the arbitration proceeding"); *United States ex rel. Postel Erection Grp., L.L.C. v. Travelers Cas. & Ins. Co. of Am.*, 2012 WL 2505674, at *2 (M.D. Fla. June 28, 2012) (same).

More importantly, allowing this case to move forward risks creating inconsistent liability determinations. For instance, liability against Great Irish Pubs must be established before reaching Piccolo's agency claims. And both proceedings will involve the same facts and legal questions. Thus, it would be problematic for this litigation to continue since each tribunal may decide the issues differently. *See Abousamak*, 2022 U.S. Dist. LEXIS 195070, at *5 (entering stay to avoid "the possibility of inconsistent results on factually similar claims"); *VPNetworks,* 2020 WL 13227751, at *5 (finding that without a stay the proceedings could result in inconsistent outcomes).

In any event, these proceedings might ultimately be stayed should Great Irish Pubs join the arbitration. *See, e.g.*, *Armas v. Prudential Sec., Inc.*, 842 So. 2d 210, 212 (Fla. 3d DCA 2003) (compelling arbitration because allegations involved "concerted conduct by both the non-signatory and one or more of the signatories" (citing *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999)). WDPR would not oppose Great Irish Pubs doing so.

CONCLUSION

For these reasons, WDPR asks the Court to enter an order: (1) compelling Piccolo to arbitrate all claims against WDPR; and (2) staying this action pending arbitration.

Dated: May 31, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on May 31, 2024, a copy of the foregoing was filed and served via Florida's e-Filing Portal on the following:

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