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

PAMELA THOMAS, MARY ANN THOMAS, KIMBERLY THOMAS, MARILYN DIETZ, *Plaintiffs,* vs. CARVAJAL PHARMACY LTC LLC, CARVAJALS, INC., MATTHEW FELAN, *Defendants.*	§ § § § § § § § § § § § §	SA-26-CV-00395-JKP

ORDER

Before the Court in the above-styled cause of action is Defendants Carvajal Pharmacy LTC, LLC and Carvajals, Inc.'s Rule 12(b) Motion to Dismiss and Compel Arbitration [#10]. By their motion, Defendants Carvajal Pharmacy LTC, LLC and Carvajals, Inc. (collectively "the Carvajal Defendants") ask the Court to compel Plaintiffs to arbitrate their dispute pursuant to an arbitration agreement executed between Plaintiffs and non-party Integrity Couriers. Plaintiffs argue that the motion to compel should be denied and, in any event, a stay rather than dismissal is the appropriate course if the Court finds that Plaintiffs' claims are subject to binding arbitration.

This case was referred to the undersigned for all non-dispositive pretrial proceedings. The undersigned therefore has authority to issue this non-dispositive order on the Carvajal

Defendants' motion pursuant to 28 U.S.C. § 636(b)(1)(A).[1] For the reasons that follow, the Court will deny the motion to compel arbitration.

I. Background

This putative collective action arises under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* Plaintiffs Pamela Thomas, Kimberly Thomas, Mary Ann Thomas, and Marilyn Dietz bring this suit on behalf of themselves and all others similarly situated against Defendant Carvajal Pharmacy LTC LLC; Carvajals, Inc.; and Matthew Felan.[2] Plaintiffs allege that they were employed by Defendants as pharmacy delivery drivers, were misclassified as independent contractors, regularly worked more than 40 hours a week, and were not paid the overtime compensation they are due. Plaintiffs also plead claims of breach of contract, quantum meruit, money had and received, and unjust enrichment.

The Carvajal Defendants have moved to compel arbitration, arguing that Plaintiffs are independent contractors who delivered their pharmaceutical products through Integrity Couriers, a third-party staffing company, and were never employees of Defendants. According to the Carvajal Defendants' motion, Plaintiffs' respective contracts with Integrity Couriers include identical arbitration clauses requiring them to arbitrate all claims arising out of the independent

[1] Although Defendants ask the Court to dismiss this case and compel arbitration, this Court does not have discretion to dismiss. The Supreme Court has held that when a district court finds that a lawsuit is subject to arbitration and a party requests a stay pending arbitration, as Plaintiffs do here, Section 3 of the Federal Arbitration Act ("FAA") compels the Court to stay the case rather than dismiss. *Smith v. Spizzirri*, 601 U.S. 472, 475, 478 (2024); *see also* 9 U.S.C. § 3 ("[U]pon being satisfied that the issue involved in [the] suit . . . is 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."). Defendants' motion is therefore construed as non-dispositive.

[2] Defendant Felan does not appear to have been served with process, and the time to do so has expired under Federal Rule of Civil Procedure 4(m). Plaintiffs have not requested an extension of the time for service.

contractor agreement, which concern the same services that are the subject of this suit. Plaintiffs respond that the Carvajal Defendants are non-signatories to the arbitration agreements at issue, and Texas law does not permit them to invoke the agreements under the circumstances presented here. Secondly, Plaintiffs argue they are exempt from the Federal Arbitration Act ("FAA") as "transportation workers" under Section 1 of the FAA, 9 U.S.C. § 1, *et seq.* Third, as noted, Plaintiffs argue that a stay, not dismissal, is the appropriate remedy if the Court were to compel the parties to arbitration. The motion is ripe for review.

II. Legal Standard

The Fifth Circuit has established a two-step inquiry in determining whether the parties have agreed to arbitrate a claim. "The first is contract formation—whether the parties entered into *any arbitration agreement at all*. The second involves contract interpretation to determine whether *this* claim is covered by the arbitration agreement." *Kubala v. Supreme Prod. Servs., Inc.*, 830 F.3d 199, 201 (5th Cir. 2016) (emphasis in original). In the absence of a valid clause delegating the threshold issue of arbitrability to the arbitrator, both steps are questions for the Court. *Id.* However, where the parties' contract does delegate the question of arbitrability to the arbitrator, a court possesses no authority to decide whether the parties' dispute falls within the scope of the agreement. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S 63, 68 (2019).

Although there is a strong presumption favoring arbitration, the presumption arises only after the party seeking to compel arbitration proves that a valid arbitration agreement exists. *TRC Env't Corp. v. LVI Facility Servs., Inc.*, 612 F. App'x 759, 762 (5th Cir. 2015) (per curiam). Hence, the party moving to compel arbitration bears the initial burden of proving the existence of a valid agreement by the parties to arbitrate. *See Huckaba v. Ref-Chem, L.P.*, 892 F.3d 686, 688

(5th Cir. 2018). Once the moving party has met its initial burden, the burden shifts to the party resisting arbitration to assert a reason that the arbitration agreement is unenforceable. *Carter v. Countrywide Credit Indus., Inc.*, 362 F.3d 294, 297 (5th Cir. 2004) (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991)).

III. Analysis

The arbitration agreement attached to the Carvajal Defendants' motion is contained in an "Independent Contractor Agreement" executed between Integrity Couriers and each of the four Plaintiffs. (IC Agreements [#103-1], at 1–26.) The IC Agreements state that Integrity Couriers contracts with pharmacies to deliver their medications and other products to their customers and that Plaintiffs agreed to provide the "independent contractor delivery services" listed in Schedule 1 attached to the agreement. (*Id.* at 2.) The contract expressly provides that Plaintiffs "may work for other companies" while working for Integrity Couriers, and that Integrity Couriers will pay Plaintiffs according to a delivery fee schedule agreed upon by the parties. (*Id.*) The arbitration provision of the contract states as follows:

> Arbitration. All disputes between the parties hereto [i.e., Integrity Couriers and Plaintiffs] in relation to, or arising out of, this Agreement, the interpretation of it, or your engagement, or termination, as an independent contractor, including claims under any Laws shall be decided by binding arbitration in San Antonio, Texas before a single arbitrator pursuant to the commercial arbitration rules of the American Arbitration Association. The arbitrator may authorize the parties to conduct limited discovery under the conditions and to the extent that the arbitrator determines to be reasonably necessary for the efficient and equitable resolution of the dispute. Reimbursement of legal expenses and related costs of any arbitration will be awarded in the manner determined by the arbitrator. Notwithstanding the foregoing, the Company may enforce its rights under, and seek all applicable remedies for breach of, Sections 4(a) and 6 of this Agreement in any court of competent jurisdiction. No party shall be entitled to join or consolidate claims with other claimants in the arbitration or arbitrate any claim as a representative member of a class or in a private attorney general capacity.

(*Id.* at 4.)

The primary disputed issue in the motion to compel arbitration is whether the arbitration agreement executed between Plaintiffs and Integrity Couriers compels them to arbitrate their dispute with and claims against the Carvajal Defendants, who are indisputably non-signatories to the agreements. The question of whether a non-signatory can be bound to, or permitted to enforce, an arbitration agreement is one for the court—not the arbitrator—to decide, as it bears on the gateway issue of whether there is a valid arbitration clause between specific parties. *Newman v. Plains All Am. Pipeline, L.P.*, 23 F.4th 393, 398–99 (5th Cir. 2022); *see also G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 524 (Tex. 2015).

Ultimately, this question requires this Court to determine the intent of the parties, as expressed in the terms of the agreement, applying ordinary principles of contract law. *G.T. Leach Builders*, 458 S.W.3d at 524. The U.S. Supreme Court and Fifth Circuit have both recognized that the specific question of whether a non-signatory to an arbitration agreement can enforce that agreement is a question of state law. *See Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31 (2009) (explaining the FAA does not "alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)" and holding the lower court's finding "that nonparties to a contract are categorically barred from . . . relief was error"); *Crawford Prof'l Drugs, Inc. v. CVS Caremark Corp.*, 748 F.3d 249, 255 (5th Cir. 2014) (applying *Arthur Andersen* and finding state law applies to the question whether a non-signatory may enforce an agreement to arbitrate).

The Carvajal Defendants, as the parties seeking arbitration, bear the burden of demonstrating the existence of an enforceable arbitration agreement between the parties and that as non-signatories they can enforce the Integrity Couriers contracts against Plaintiffs. *Hays v.*

HCA Holdings, Inc., No. A-15-CA-432-SS, 2015 WL 5737963, at *4 (W.D. Tex. Sept. 30, 2015) (citing *G.T. Leach Builders*, 458 S.W.3d at 524). Texas law recognizes six theories by which a non-signatory may seek to enforce an arbitration agreement: (1) incorporation by reference; (2) assumption; (3) agency; (4) alter ego; (5) equitable estoppel; and (6) third-party beneficiary. *G.T. Leach Builders*, 458 S.W.3d at 524. The Carvajal Defendants rely on the theory of equitable estoppel as the basis of their motion, specifically arguing that the theory of "intertwined claims estoppel" applies to the facts of this case.

"Intertwined claims estoppel involves 'compel[ing] arbitration when a nonsignatory defendant has a "close relationship" with one of the signatories and the claims are 'intimately founded in and intertwined with the underlying contract obligations.'" *Hays v. HCA Holdings, Inc.*, 838 F.3d 605, 610 (5th Cir. 2016). The purpose of this theory of estoppel is to protect against "instances of strategic pleading by a signatory who, in lieu of suing the other party for breach, instead sues that party's nonsignatory principals or agents for pulling the strings." *In re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 194 (Tex. 2007).

The Texas Supreme Court has not expressly adopted intertwined claims estoppel as a valid theory of estoppel. *Hays*, 838 F.3d at 610. Yet the Fifth Circuit, in making an *Erie* guess on what the Texas Supreme Court would decide, found that the Texas court has "strongly implied the validity of this form of estoppel, particularly to counter the problem of strategic pleading." *Id.* at 611 (citing *Merrill Lynch*, 235 S.W.3d at 193–94). Texas courts of appeals have compelled arbitration pursuant to intertwined claims estoppel, and Texas—along with federal—arbitration policy "strongly favor[s]" arbitration and "dictate[s] that any doubt as to whether a controversy is arbitrable should be resolved in favor of arbitration." *Id.* at 611–12 (collecting intermediate Texas cases and quoting *McKee v. Home Buyers Warranty Corp.*, 45

F.3d 981, 985 (5th Cir. 1995); *Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494, 499 (Tex. 2015)). The Fifth Circuit recently noted that Texas law has not changed since the 2016 panel made its *Erie* guess in *Hays* and then reaffirmed its position that intertwined claims estoppel is a valid theory of estoppel under Texas law for purposes of enforcing an arbitration agreement as to claims involving a non-signatory to the agreement. *Newman*, 23 F.4th at 404.

To prove the application of intertwined claims estoppel here, the Carvajal Defendants must establish both that (1) a "close relationship" exists between themselves and Integrity Couriers and (2) Plaintiffs' claims are "intimately founded in and intertwined with the underlying contract obligations." *Hays*, 838 F.3d at 610. The Fifth Circuit, relying on Texas law, has explained that a "close relationship" for purposes of intertwined claims estoppel "must be closer than merely independent participants in a business transaction." *Newman*, 23 F.4th at 405 (internal quotations omitted). The Texas Supreme Court has recognized that a close relationship typically requires "some corporate affiliation between a signatory and non-signatory, not just a working relationship." *Jody James Farms, JV v. Altman Group, Inc.*, 547 S.W.3d 624, 640 (Tex. 2018). Ultimately, the "test is one of consent, not coercion." *Newman*, 23 F.4th at 405 (quotation omitted). "Would a reasonable signatory to the arbitration agreement anticipate being forced to arbitrate claims against the nonsignatory?" *Id.*

Applying this framework, the Fifth Circuit rejected the application of intertwined claims estoppel in an FLSA case, finding no close relationship between the non-signatory attempting to compel the FLSA plaintiffs to arbitration and the party to the arbitration agreement. *Id.* That case is instructive here. In *Newman*, the plaintiff signed an employment agreement with a company responsible for staffing oil pipeline inspectors to work as independent contractors on various client-company projects. *Id.* at 397. The employment agreement contained an arbitration clause, in which the plaintiff agreed to arbitrate all claims arising out of his employment with the staffing company. *Id.* The employment agreement did not expressly mention the client company to which the plaintiff was staffed but specified that the staffing company had hired plaintiff "based on a specific project" and "for a designated customer" and incorporated by reference a pay letter designating the customer by name. *Id.* Like Plaintiffs here, when the plaintiff in *Newman* sought to recover unpaid overtime compensation, he brought a collective action against the customer company, not the staffing company. The customer company moved to compel arbitration based on the plaintiff's employment agreement with the staffing company, and the district court denied the motion, holding that the customer company could not enforce the arbitration agreement under an intertwined claims theory of estoppel. *Id.*

The Fifth Circuit affirmed, emphasizing that the staffing company and the customer company were independent business entities and that the two companies had not been treated as a single unit in the pleadings (and in fact the staffing company was not even named as a defendant in the suit (though later intervened)). *Id.* at 405. These two factors have primarily driven the decisions by district courts in this Circuit faced with the question of whether there is a sufficiently "close relationship" between the signatory and non-signatory to justify the application of intertwined claims estoppel. *Compare Hays*, 2015 WL 5737963, at *2 (finding "close relationship" where the two companies were related entities under common corporate control and pleadings treated the companies as interchangeable or a single unit) *with Santos v. Wincor Nixdorf, Inc.*, No. 1:16-cv-440 RP, 2016 WL 4435271, at *5–6 (W.D. Tex. Aug. 19, 2016) (finding no "close relationship" where the relationship between the two companies was that of client-customer and pleadings contained specific and distinct allegations against each entity).

The *Santos* case also arose under the FLSA and involved an arbitration agreement executed with a staffing agency that in turn assigned the plaintiffs to work for a customer. *Santos*, 2016 WL 4435271, at *1. The non-signatory moving to compel arbitration argued that "but for the relationship between the two entities" the customer would not have been subject to suit, but the district court rejected the argument. *Id.* at *5. This was not enough for the district court to find a "close relationship" under Texas law between the companies. *Id.* The Carvajal Defendants make the same argument here—that but for their relationship with Integrity Couriers, Plaintiffs would not have been assigned to work to make deliveries for them. But merely establishing some causal relationship between the parties' relationship and the claims at issue is not the test for whether a "close relationship" exists under the Fifth Circuit's interpretation of Texas law. Again, to invoke the arbitration clause in the Independent Contractor Agreement to which they were not parties, the Carvajal Defendants must establish more than a mere business relationship between themselves and Integrity Couriers related to the claims at issue. *See Newman*, 23 F.4th at 405.

The Carvajal Defendants urge the Court to disregard the cases cited by Plaintiffs and referenced herein concerning staffing companies, arguing that Integrity Couriers is not a staffing company but "a captive delivery company" only providing services to the Carvajal Defendants. The Fifth Circuit has not drawn this distinction. Moreover, this is a distinction that does not make a difference, based on the reasoning articulated by the courts, as explained above. Here, the Independent Contractor Agreement expressly states that Plaintiffs are permitted to work for other companies while providing delivery services for the Carvajal Defendants. (IC Agreements [#103-1], at 2.) That Plaintiffs chose not to do so and worked exclusively for the Carvajal Defendants is not a reason to disregard the guidance of these precedents.

Against this backdrop, the Court finds that the Carvajal Defendants have failed to carry their burden of establishing a "close relationship" between themselves and Integrity Couriers of the type recognized under Texas law as a basis for applying the doctrine of intertwined claims estoppel. The evidence in the record establishes that "Integrity Couriers maintains its own separate corporate identity from the Carvajal Defendants." (McGarity Aff. [#10-2], at ¶ 5.) The companies are not subject to common control; they have no corporate affiliation. *See Hays*, 2015 WL 5737963, at *2; *Jody James Farms*, 547 S.W.3d at 640. Their relationship instead is that of "independent participants in a business transaction" resulting in a client-customer relationship. *See Newman*, 23 F.4th at 405; *Santos*, 2016 WL 4435271, at *5–6. The Delivery Services Agreements between Defendants and Integrity Couriers reflect a business relationship established by two unrelated entities, where the pharmacies engaged Integrity "as an independent contractor to deliver, on a full-time, non-exclusive basis, prescription medications and other products sold by the [pharmacies]." (Delivery Services Agreements [#10-3], at 215, 221.) No "reasonable signatory to the arbitration agreement" with Integrity Couriers would "anticipate being forced to arbitrate claims against [the Carvajal Defendants]." *See Newman*, 23 F.4th at 405. The arbitration provision clearly limits its application to disputes "between the parties . . . in relation to, or arising out of" the Independent Contractor Agreement. (IC Agreement [#103-1], at 4.) The contract does not refer to any specific customer by name, let alone refer to the Carvajal Defendants. Defendants have failed to establish a "close relationship" between themselves and Integrity Couriers under governing law.

Because the Carvajal Defendants did not establish that a "close relationship" exists between themselves and Integrity Couriers under Texas law, their motion to compel arbitration must be denied. The Carvajal Defendants have only invoked the intertwined claims estoppel theory to argue existence of an enforceable arbitration agreement between themselves (non-signatories) and Plaintiffs. But there is a second, independent reason to deny their motion: The Carvajal Defendants have failed to establish the second prong of their estoppel theory—that their claims are "intimately founded in and intertwined with the underlying contract obligations." *Hays*, 838 F.3d at 610.

Plaintiffs could assert the same FLSA and common law claims they have brought here against the Carvajal Defendants regardless of whether any Integrity Couriers agreement existed, because Plaintiffs' claims are premised on obligations imposed on the Carvajal Defendants by federal law as well as state common law—and are not based on the terms of the Independent Contractor Agreement. *See Hiser v. NZone Guidance, L.L.C.*, 799 F. App'x 247, 248 (5th Cir. 2020) (finding the related concept of direct-benefits estoppel could not be applied to compel FLSA claims to arbitration because these claims were "based on a right conferred by federal law" and not the contract containing the arbitration agreement); *see also Sanchez Oil & Gas Corp.*, No. SA-19-CV-00867-JKP, 2019 WL 6606530, at *5–6 (W.D. Tex. Dec. 5, 2019) (rejecting application of direct-benefits estoppel in FLSA overtime action because claims were statutory in nature and though they "relate[d] to the contract" with the third party staffing agency, they did "not arise from it").

Because the Carvajal Defendants have not established that an enforceable arbitration agreement exists between them and Plaintiffs, their motion to compel arbitration must be denied. The Court therefore will not address the alternative arguments raised by Plaintiffs that may also provide an independent basis for denying the motion to compel arbitration.

IT IS HEREBY ORDERED that Defendants Carvajal Pharmacy LTC, LLC and Carvajals, Inc.'s Rule 12(b) Motion to Dismiss and Compel Arbitration [#10] is **DENIED**.

IT IS FURTHER ORDERED that the Carvajal Defendants file their answers or other responsive pleadings within **14 days** of this Order, after which the Court will set this case for an initial pretrial conference.

SIGNED this 4th day of August, 2026.

ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE