UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

LORI FITZGERALD, *et al.*,

Plaintiffs,

v. **Civil Action No. 3:20-cv-00044-NKM-JCH**

JOSEPH WILDCAT SR., *et al.*,

Defendants.

REPLY OF DEFENDANTS SKY TRAIL SERVICING GROUP, LLC AND WILLIAM CHENEY PRUETT IN SUPPORT OF MOTION TO COMPEL INDIVIDUAL ARBITRATION OF PLAINTIFF MAVILLE'S CLAIMS AND STAY PLAINTIFF'S CLAIMS PENDING ARBITRATION

Defendants Sky Trail Servicing Group, LLC ("Skytrail Servicing") and William Cheney Pruett ("Pruett" and, collectively, "Skytrail Defendants"), by counsel, submit this reply brief in support of their Motion to Compel Individual Arbitration of Plaintiff Angela Maville's ("Plaintiff") Claims and Stay Plaintiff's Claims Pending Arbitration (Dkt. 144) pursuant to Fed. R. Civ. P. 12(b)(3).

I. INTRODUCTION

The loan agreement (the "Agreement") and case law in this Circuit support Skytrail Defendants' position that (1) the Agreement expressly includes all federal and state claims and does not constitute a prospective waiver; (2) Skytrail Servicing and Pruett are entitled to enforce the Arbitration Provision in the Agreement; and (3) the Court should stay Plaintiff's claims against Skytrail Servicing and Pruett pending arbitration. *See* Dkt. 145. In response, Plaintiff argues that the Agreement suffers from the same defects as earlier Fourth Circuit cases where the court declined to enforce arbitration. In so arguing, Plaintiff fails to analyze the specific provisions of *this* Agreement or compare those provisions to the key terms of the agreements analyzed in those

prior cases. Instead, Plaintiff simply asks the Court to assume the agreements are identical in all relevant respects. They are not. When analyzed on its own merits rather than by implication, it is clear that the Agreement between Plaintiff and Ningodwaaswi, LLC d/b/a Sky Trail Cash ("Sky Trail Cash") is "on the up-and-up and avoid[s] the kind of mess" found in other agreements. *See Hayes v. Delbert Servs. Corp.*, 811 F. 3d 666, 676 (4th Cir. 2016). The arbitration agreement here is enforceable.

II. ARGUMENT

A. Plaintiff's prospective waiver defense fails because the language of the Agreement expressly includes all federal and state claims.

Plaintiff's response to Skytrail Defendants' motion to compel centers on its prospective waiver argument. Under the prospective waiver doctrine, courts will not enforce an arbitration agreement if the agreement "prevents a litigant from vindicating federal substantive rights." *Gibbs v. Haynes Invs., LLC*, 967 F.3d 332, 340 (4th Cir. 2020) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 637 n.19 (1985)). As *Williams v. Martorello* and the lineage of Fourth Circuit cases discussed therein shows, not all arbitration agreements in consumer loan contracts are unenforceable. Rather, the operative language of the specific loan agreement at issue and its arbitration provision are critical to determining whether a plaintiff has prospectively waived her federal statutory rights. 59 F.4th 68, 81-83 (4th Cir. 2023).

Here, the Arbitration Provision within the Agreement commits all "disputes" between a consumer and Sky Trail Cash (or a related third party) to arbitration before the American Arbitration association. *See* Dkt. 124-1 at 10-11 (agreeing that "you and we agree that we shall arbitrate that dispute in accordance with the terms of the Arbitration Provision" and "you hereby agree and acknowledge that you are waiving your right to have a court resolve any dispute alleged

against us or related third parties"). The Arbitration Provision also makes clear that the term "dispute" includes all federal and state law claims, thereby committing those claims to arbitration:

> The words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation
> (a) all claims, disputes, or controversies arising from or relating directly or indirectly to this Dispute Resolution Procedure and Arbitration Provision ("this Provision"), the validity and scope of this Provision and any claim or attempt to set aside this Provision;
> (b) **all U.S. federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Agreement** . . . ;
> (c) all counterclaims, cross-claims and third-party claims;
> (d) all common law claims, based upon contract, tort, fraud, or other intentional torts;
> (e) **all claims based upon a violation of any state or federal constitution, statute, or regulation**;
> (f) all claims asserted y us against you, including claims for money damages to collect any sum we claim you owe us;
> (g) all claims asserted by you individually against the Tribe, us and/or any of our employees, agents, directors, officers, governors, managers, members, parent company or affiliated entities (collectively, "related third parties"), including claims for money damages and/or equitable or injunctive relief . . . .

Dkt. 124-1 at 11 (emphasis added). This language directly contrasts with the loan agreements in *Hayes*, 811 F.3d 666, *Dillon v. BMO Harris Bank, N.A.*, 856 F.3d 330 (4th Cir. 2017), *Gibbs v. Sequoia Capital Operations, LLC*, 966 F.3d 286 (4th Cir. 2020), *Gibbs v. Haynes Invs., LLC*, 967 F.3d 332 (4th Cir. 2020), *Hengle v. Treppa*, 19 F.4th 324 (4th Cir. 2021), and *Martorello*, 59 F.4th 68. Unlike the arbitration agreements at issue in those cases, the Agreement here expressly allows for arbitration of *all federal claims*. Plaintiff's arguments regarding some implied waiver of claims, based on opinions interpreting *different language* in *other arbitration agreements* fails in light of the express language of *this* Agreement.

Nor does the Agreement's choice of law provision act as an implied waiver. The governing law provision of Plaintiff's Agreement simply states that "The laws of the Tribe and *applicable federal law* will govern this Agreement, without regard to the laws of any state or other jurisdiction

including the conflict of laws rules of any state." Dkt. 124-1 at 8-9 (emphasis added). And in "any dispute between [borrower] and us, Tribal law *and applicable federal law* shall exclusively apply to such dispute." *Id.* at 9 (emphasis added). That choice of law provision is not meaningfully different from any other contract with a choice of law provision that designates the law of one state (or tribe) to apply to a contract. *See Scherk v. Alberto Culver Co.*, 417 U.S. 506, 518 (1974) (noting, in the context of international trade, that contractual choice-of-law provisions are "an almost indispensable precondition to achievement of the orderliness and predictability essential" to economic growth); *Viridis Corp. v. TVA Global Credit Master Fund, LP*, 721 F. App'x 865, 873 (11th Cir. 2018) (unpublished) ("Appellants argue that applying Nevada law, which places no limit upon the rate of interest that may legally be charged, would violate a strong public policy in Florida against usury. We cannot agree."). Furthermore, that language cannot be read as an implicit waiver, which would conflict with the more specific language in the Agreement that expressly preserves all federal claims.

1. Plaintiff can arbitrate federal claims under the terms of the Agreement.

In an attempt to paint *this Agreement* into the box created by her caselaw, Plaintiff argues that the Agreement represents "an unambiguous attempt to apply tribal law to the exclusion of federal and state law." Dkt. 152 at 10 (quoting *Dillon*, 856 F.3d at 336). But that is plainly not the case: the Agreement is governed by **tribal and federal law** and provides for arbitrability of **all federal and state law claims**. Here, the language of the Agreement itself controls over Plaintiff's contrary characterizations and allegations. *See Fayetteville Invs. v. Com. Builders, Inc.*, 936 F.2d 1462, 1465 (4th Cir.1991) ("[I]n the event of conflict between the bare allegations of the complaint and any exhibit attached pursuant to Rule 10(c) . . . the exhibit prevails."). In contrast, the arbitration agreements at issue in *Hayes*, *Dillon*, and *Hengle* restricted the applicable remedies solely to those provided by tribal law. None permitted the arbitrators to consider otherwise-

applicable federal law. *Hayes*, 811 F.3d at 669; *Dillon*, 856 F.3d at 332-33; *Hengle*, 19 F.4th at 342. In *Haynes* and *Sequoia*, "the practical effect [was] the same" as *Hayes* and *Dillon* because tribal law preempted any contrary federal law. *Haynes*, 967 F.3d at 342; *Sequoia*, 966 F.3d at 289. In stark contrast to the arbitration agreements at issue in those decisions, the Agreement here expressly preserves federal claims and contains no waivers or restrictions on otherwise-applicable federal law. *See* Dkt. 124-1 at 8.

After trying to shoehorn the Agreement into the mold of those cases applying only tribal law, Plaintiff points to the words "applicable federal law" in the Agreement, shorn of any context, to claim that federal law is *not* applicable, on the grounds that the arbitration agreement in *Martorello* contained that same three-word snippet. Dkt. 152 at 12. But the context is critical, and the mere appearance of the word "applicable" both in Plaintiff's Agreement and the loan agreement in *Martorello* does not compel the same outcome. In *Martorello*, there was no statement of governing law explicitly calling for the application of both tribal and federal law. 59 F.4th at 73. Indeed, the dispute in *Martorello* was not even over what law applied in neutral arbitration proceedings, but what law applied in dispute resolution procedures before the tribal defendant itself, the exclusive remedy under that loan agreement. *See id.* Unlike *Martorello*, the Agreement here does not direct Plaintiff's claims exclusively to a tribal forum—rather, any federal claims must be arbitrated in front of the American Arbitration Association, a respected neutral provider of arbitration services. Similarly, although the dispute resolution procedure in *Martorello* was supposed to consider federal consumer protection laws, that tribe's law contained repeated waivers of the application of federal law. *Id.* at 73, 84. Plaintiff does not point to any such waivers here, nor can she because none exist.

2. The Tribal Code does not contain an impermissible prospective waiver.

Plaintiff argues that the tribal code here contains impermissible waivers of federal statutory rights like those in *Haynes*, *Hengle*, and *Martorello*. Her conclusory comparison, though, fails to identify and explain exactly what claim or claims cannot be brought under *this* tribal code. For example, Plaintiff suggests that RICO claims could not be brought under *other tribes' codes* for lack of a predicate usury law violation. Dkt. 152 at 20; *see, e.g.*, *Shannon-Vail Five Inc. v. Bunch*, 270 F.3d 12071213 (9th Cir. 2001) (enforcing choice-of-law provision and finding that plaintiffs' usury claim failed because Nevada law applied, and Nevada has no usury prohibition). But there is no federal usury limit—indeed, Congress has expressly prohibited its primary federal consumer protection regulator from establishing a national usury rate. 12 U.S.C. § 5517(o) ("No provision of this title shall be construed as conferring authority on the bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law."). Plaintiff's comparison to other tribal codes highlights the reality that Plaintiff can vindicate federal statutory rights under the Agreement. While the source of the usury limit in this case will come from Tribal—and not Virginia—law, that is the nature of a choice of law clause.

3. The prospective waiver doctrine does not extend to state statutory claims.

The prospective waiver doctrine, as articulated by the Supreme Court and the Fourth Circuit, states that "where an arbitration agreement prevents a litigant from vindicating *federal substantive statutory rights*, courts will not enforce the agreement." *Haynes*, 967 F.3d at 340 (emphasis added) (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 n.19 (1985)). Despite the doctrine's focus on federal rights, Plaintiff seeks to extend the prospective waiver doctrine to state statutory rights.

Plaintiff's claim cannot be correct. If it were, then every contract that designated the governing law of a particular state would be invalid. Many contracts routinely apply the law of one state to the exclusion of all others. A holding by this Court that a designation of controlling law renders a contract unenforceable would compel the conclusion that every contract with a choice of law clause is also unenforceable. Plaintiff's preferred outcome is not supported by authority, public policy, or common sense.

Plaintiff's concern with vindicating state statutory rights has more to do with vindicating statutory rights of her preferred jurisdiction—that is, Virginia's usury laws. (Dkt. 152 at 13.) But an agreement to apply tribal law instead of Virginia law is no different than an agreement to apply the laws of any other state instead of Virginia law—including the laws of the many states that do not have the same usury laws that Virginia has passed. As another court in this Circuit reasoned, "the fact that Virginia potentially affords [different statutory protection] than [another state] does not mean Plaintiff[] [is] 'wholly' left without federal remedies or other state remedies . . . ." *Buckmire v. LaserShip, Inc.*, 2022 WL 4585523, at *10 (E.D. Va. Sept. 29, 2022). So too here. Indeed, Plaintiff is free to bring any state law claims before the arbitrator and argue why the arbitrator should award her relief. The Agreement commits the determination of that issue to the arbitrator. But the Court should decline Plaintiff's invitation to use the prospective waiver doctrine to rewrite (or remove) a contractual choice of law provision simply because tribal law is not identical to Virginia law.

Different sovereigns have different approaches to consumer protection. Some states—such as Idaho, Nevada, and Utah—have chosen not to enact a specific interest rate cap when loans are contracted in writing. Among states that have interest rate caps, the rates can vary and are often expressed in inconsistent terms. Those sovereign governments are free to take different regulatory

approaches to consumer lending. Utah's policy decision to regulate consumer loan contracts via a flexible unconscionability standard rather than a strict rate cap, *see* Utah Code Ann. § 70C-7-106, is no less important to Utah than Virginia's interest rate limit is to Virginia. Similarly, Virginia's interest rate limit is no more important than the Tribe's decision to regulate lending in ways other than imposing an interest rate limit. And just as Utah and Virginia have an interest in enforcing their laws, so too do tribes. The fact that Virginia has taken a different approach than the Tribe or the state of Utah does not compel the conclusion that any one approach is more valid than others.

Plaintiff's rationale creates a slippery slope. Should Virginia courts also refuse to enforce Idaho, Nevada, and Utah choice-of-law clauses in consumer credit agreements because the application of those states' laws would deprive a Virginia plaintiff of a Virginia state law remedy? Should courts in those state refuse to apply Virginia law? If courts are free to apply the laws of a forum state in derogation of a choice-of-law provision simply because the laws of two states reflect different public policy choices, then choice-of-law provisions will become meaningless.

As purported authority for this expansion of the prospective waiver doctrine, Plaintiff points to a footnote in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1919 n.5 (2002) to argue that the Supreme Court has definitively found that the prospective waiver doctrine applies to state substantive rights. Dkt. 152 at 10. Plaintiff misconstrues the Court's brief discussion of the doctrine in *Moriana*. The case referenced by the Court in *Moriana* dealt with the issue of whether a party could assert a state law defense in an arbitral forum. *Moriana*, 142 S. Ct. at 1919 n.5 (citing *Preston v. Ferrer*, 552 U.S. 346, 352 (2008)). There, the parties did not dispute that the law of a particular state—California—applied under the arbitration agreement or that the plaintiff could bring a California state law claim in arbitration. *See id.* The Court in *Moriana* simply sought to emphasize that "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive

rights afforded by the statute; it only submits to their resolution in an arbitral . . . forum." *Moriana*, 142 S. Ct. at 1919 (quoting *Preston*, 552 U.S. at 359). Nothing in *Moriana* holds, or even states in dicta, that the prospective waiver doctrine necessarily extends to vindication of state law claims. *Moriana* is the only binding authority Plaintiff presents in support of this argument. The Supreme Court has not extended the prospective waiver doctrine to state law claims and neither should this Court.

Plaintiff also relies on *Hengle* to advance her state law prospective waiver argument. Specifically, Plaintiff states that the Agreement's "Governing Law provision . . . forbids any arbitrator from considering state law, thereby preventing one of the key outcomes of *Hengle*, which relied on state law to invalidate the tribal choice of law provision (which was being used to negate the usury claims)." (Dkt. 152 at 14.) In *Hengle*, though, the court only reached the issue of whether the lending contract's choice of law provision was enforceable after it decided that the arbitration provision was unenforceable because the exclusive application of tribal law acted as prospective waiver of plaintiff's federal statutory rights. *See* 19 F.4th at 352. Contrary to Plaintiff's assertion, the *Hengle* court did not consider or discuss prospective waiver in the context of state statutory rights. *See id.* at 338-39.

Plaintiff also relies on *Martorello* to argue that the Agreement impermissibly waives state law claims. Dkt. 152 at 16-17. *Martorello*, though, provides no such discussion of the prospective waiver doctrine in the context of state law. In fact, *Martorello* did not analyze an arbitration provision at all, but instead analyzed a tribal dispute resolution procedure. *See* 59 F.4th at 73. *Martorello*, like *Hengle*, does not support Plaintiff's argument.

In sum, there is no reason to find that an agreement *not* to apply either Virginia or Florida law, and to instead apply the laws of the tribe, serves as an impermissible waiver that precludes the enforcement of either the choice of law provision or the entire arbitration agreement.

4. The delegation clause is enforceable because the arbitrator can apply federal law.

For similar reasons, Plaintiff's analysis of the prospective waiver doctrine is unpersuasive regarding the Agreement's clause delegating the question of arbitrability to an arbitrator. As an initial matter, Plaintiff fails to acknowledge the existence of the recent controlling precedent from the Supreme Court, much less distinguish it or explain why it should otherwise not apply. That precedent clearly instructs that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses *no power to decide the arbitrability issue*. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S.Ct. 524, 529 (2019) (emphasis added)*; see also Rent-A-Ctr., W., Inc. v. Jackson,* 561 U.S. 63, 68-69 (2010).

Even if that Supreme Court precedent were not conclusive, Plaintiff's entire argument on this issue once again rests on the facially erroneous notion that the Agreement precludes the arbitrator from applying any law but tribal law. (Dkt. 152 at 29-30.) But as described *supra*, that is not the case. The Agreement here explicitly allows the arbitrator to consider and apply both tribal and federal law. Moreover, a delegation clause is valid and enforceable when an arbitration provision allows for reliance on "federal or state law" because it allows for "the effective vindication of [plaintiff's] federal statutory rights before the arbitration can even beg[i]n." *Hengle*, 19 F.4th at 339 (quoting *Williams v. Medley Opportunity Fund II, LP*, 965 F.3d 229, 243 n.14

(2020)). Because federal law applies here, the delegation clause is valid. The arbitrator must decide any questions of arbitrability.

B. Skytrail Servicing and Pruett can enforce the arbitration agreement.

Sky Trail Cash's Agreement with Plaintiff is drafted to "give[] the broadest possible meaning and include, without limitation" a broad range of claims. It extends to "all claims asserted by [borrower] individually against the tribe, us/and or any of our employees, agents, directors, officers, governors, managers, members, parents company or affiliated entities[.]" (Dkt. 124-1 at 11.) The broad language of the Agreement establishes that Skytrail Servicing and Pruett, as agents and affiliates of Sky Trail Cash, are included in disputes covered by arbitration. *See* Dkt. 124-1 at 11; *see also United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 262 U.S. 574, 582-83 (1960) ("[I]n the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.").

Plaintiff again turns to *Martorello* for support, but *Martorello* is yet again inapposite to Plaintiff's argument. In fact, the *Martorello* court contrasted the facts before it with a case analogous to the facts here. That distinction, recognized by the *Martorello* court itself, shows why Pruett and Skytrail Servicing can enforce the arbitration agreement.

> In *American Bankers Insurance Group v. Long*, 453 F.3d 623 (4th Cir. 2006), a non-signatory to a contract sought to compel arbitration with the plaintiff-signatories based on an arbitration clause in the contract "providing 'that any dispute, controversy or claim arising out of or in connection with, or relating to, any subscription of the Note, or any breach or alleged breach hereof, . . . ' shall be subject to arbitration." The non-signatory argued that the plaintiffs should be estopped from asserting that it was not a signatory to the arbitration clause because the plaintiff's claims against the non-signatory relied on the contract. The non-signatory therefore asserted that the plaintiffs should not be allowed to enforce the duties created by the contract by avoiding the contract's arbitration provision. This Court agreed, concluding that because the plaintiffs' claim relied on the contract's term, "it would be inequitable to allow [the plaintiffs] to seek recovery on their

> individual claims [but] at the same time deny that [the non-signatory] was a party to the [contract's] arbitration clause."

Martorello, 59 F.4th at 79 (alterations in original) (citing *Long*, 453 F.3d at 625-630). Here, Plaintiff similarly attempts to bring claims against Skytrail Defendants that rely on the Loan Agreement for their existence and are therefore clearly "disputes" contemplated under the Agreement, but then she wishes to disclaim Skytrail Defendants' relationship to the Agreement to avoid arbitration. Plaintiff cannot argue that Skytrail Defendants are subject to liability based on the terms of the Loan Agreement but simultaneously excluded from the broad language of the Agreement relating to arbitration of disputes.

The facts here are further distinguishable from *Martorello* because, unlike the more limited language in *Martorello*, the operative language in the Agreement is not limited to affiliated **entity**. Here, the Loan Agreement specifies that "the words 'we,' '**us**' and 'our' mean [Sky Trail Cash] . . . and any authorized representative, **agent**, **independent contractor**, or **affiliate** or assignee **we use in the provision of your loan**."[1] (Dkt. 124-1 at 4.) The Agreement's arbitration provision includes all claims brought against "us." (*Id.* at 11.) Under the Servicing Agreement, Pruett and Skytrail Servicing are both agents and affiliates used in the provision of Plaintiff's loan. (*See* Dkt. 136 Ex. 3 ¶ 2.1.) As with her opposition to Skytrail Defendants' Motion to Dismiss, Plaintiff wants it both ways. On the one hand, she argues Skytrail Servicing and Pruett are mere alter-egos of Sky Trail Cash, exercising complete control over it. (*See, e.g.*, Dkt. 136 ¶¶ 6, 103.) But as soon as it serves her to argue otherwise, Skytrail Servicing suddenly becomes a mere independent contractor too far removed from the Loan Agreement to enforce the arbitration

[1] Although Skytrail Defendants relied on this language in their opening brief, Dkt. 145 at 7 & n.3, Plaintiff did not address it and instead focused on the term "affiliated entity" elsewhere in the Agreement. (Dkt. 152 at 8, 12, 25, 28.)

provisions. Dkt. 152 at 27. In any event, however, Plaintiff overlooks that the Loan Agreement sweeps independent contractors within its scope.) *See* Dkt. 124-1 at 4) ("'we,' 'us,' and 'our,' [includes] . . . "independent contractor . . . ."). Under either of her competing theories, then, Skytrail Defendants are entitled to enforce the Agreement.

The Servicing Agreement between Sky Trail Cash and Skytrail Servicing provides even greater clarity both as to definitions and the intentions of the parties, and why Pruett is also entitled to enforce the Agreement. Under the Servicing Agreement, both Pruett and Skytrail Servicing are affiliates of Sky Trail Cash: "'Affiliate' means as to Servicing Agent or Company, any corporation, partnership, limited liability company, joint venture . . . or individual controlled by, under common control with, or which controls, directly or indirectly Servicing Agent or Company." (Dkt. 136 Ex. 3 ¶ 2.1.) This, too, shows the relationships and intent of the parties to make both Skytrail Servicing and Pruett third party beneficiaries of the Agreement.

The exhibits that Plaintiff herself attached to the SAC show conclusively that Skytrail Servicing and Pruett were agents and affiliates of Sky Trail Cash. Those exhibits control over Plaintiff's contrary assertions. *See Jeffrey M. Brown Assocs., Inc. v. Rockville Ctr. Inc.*, 7 F. App'x 197, 202 (4th Cir. 2001) (we need not accept as true . . . allegations in the complaint that are contradicted by the attachments). Moreover, the broad language of the Agreement indicates the parties' intention that Skytrail Defendants be third-party beneficiaries. Skytrail Defendants are only party to this suit because of her loan issued pursuant to the Agreement. Pruett and Skytrail Servicing therefore have standing to enforce the arbitration provision within the Agreement.

C. The Court should stay Plaintiff's claims against Skytrail Defendants pending arbitration.

In their opening brief, Skytrail Defendants argued that Plaintiff's claims against Skytrail Defendants should be stayed pending their resolution in the arbitral forum. (Dkt. 145 at 12.) This

argument was based the Federal Arbitration Act, 9 U.S.C. § 3, and Supreme Court precedent. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002). Skytrail Defendants also noted that there is uncertainly in this Circuit regarding whether to dismiss or stay an action once compelled to arbitration. *See Green v. Zachry Indus., Inc.*, 36 F.3d 669, 678-79 (W.D. Va. 2014).

Skytrail Defendants again ask the Court to stay these proceedings pending arbitration of Plaintiff's claims. Although Plaintiff asks for dismissal of her claims without prejudice if arbitration is compelled, a stay would accord with applicable law and serve the interests of judicial economy by preventing Plaintiff from re-filing her claims elsewhere while arbitration is pending. A stay is therefore the appropriate course.

III. CONCLUSION

Plaintiff entered into an enforceable arbitration Agreement where she agreed to arbitrate all disputes, including the disputes' arbitrability. Skytrail Servicing and Pruett have standing to enforce the Agreement. Consistent with "the national policy favoring arbitration" embodied in the FAA, *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 443 (2006), the Court should compel Plaintiff to abide by her agreement.

WILLIAM CHENEY PRUETT and
SKY TRAIL SERVICING GROUP, LLC

By: */s/ David N. Anthony*

David N. Anthony
Virginia State Bar No. 31696
Counsel for William Cheney Pruett and Sky Trail Servicing Group, LLC
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point
Richmond, VA 23219
Telephone: (804) 697-5410
Facsimile: (804) 698-5118
Email: david.anthony@troutman.com

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March 2023, I caused the foregoing document to be filed with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ David N. Anthony
David N. Anthony
Virginia State Bar No. 31696
Counsel for William Cheney Pruett and Sky Trail Servicing Group, LLC
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point
Richmond, VA 23219
Telephone: (804) 697-5410
Facsimile: (804) 698-5118
Email: david.anthony@troutman.com

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