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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Terri Hayford,

No. CV-16-04480-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 Nationstar Mortgage LLC, *et al.*,

13 Defendants.

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15 At issue is Defendant Nationstar Mortgage LLC's Motion to Dismiss, Strike
16 Collective Action Claims, and Compel Arbitration, or in the Alternative to Stay
17 Proceedings (Doc. 12, Mot.). Because Plaintiff did not file a response, Nationstar is
18 entitled to summary disposition of its Motion. LRCiv 7.2(i). That proposition is not
19 altogether straightforward here, so the Court will examine the requests Nationstar makes
20 in its Motion in more detail.

21 To resolve a motion to compel arbitration under the Federal Arbitration Act
22 ("FAA"), 9 U.S.C. § 1 *et seq.*, a district court must determine (1) whether the parties
23 entered into a valid agreement to arbitrate, and (2) whether the arbitration agreement
24 encompasses the dispute at issue. *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d
25 1010, 1012 (9th Cir. 2004). If the district court finds that both elements are met, the FAA
26 requires the court to enforce the arbitration agreement. *Id.* Section 1 of the FAA provides
27 that it does not apply to "contracts of employment" of any "workers engaged in foreign
28 or interstate commerce." 9 U.S.C. § 1.

1 In this action, Plaintiff brings a claim for unpaid overtime wages under the Fair
2 Labor Standards Act, 29 U.S.C. § 201 *et seq.*, against her former employer, Nationstar,
3 and separately against another former employer, Defendant Aerotek Inc. (Doc. 1,
4 Compl.) Plaintiff acknowledged receipt and accepted the terms of Nationstar’s
5 Arbitration Policy as a condition of her employment. (Doc. 12-1 Exs. 1, 2.) The Policy
6 provides that Nationstar “and all of its employees agree to submit all disputes between
7 them involving legally-protected or recognized rights to final and binding arbitration”
8 pursuant to the terms of the Policy and the Rules of the Judicial Arbitration and
9 Mediation Services (“JAMS”). (Doc. 12-1 Ex. 1.) The Policy specifically lists “claims for
10 wages or other compensation due” as subject to final and binding arbitration. (Doc. 12-1
11 Ex. 1.) The Policy also explicitly states that it is not a contract of employment, express or
12 implied. (Doc. 12-1 Ex. 1.)

13 The Court finds that the FAA applies to Plaintiff’s claim against Nationstar and,
14 because the Policy is not a contract of employment, Plaintiff is not exempt from
15 arbitration under § 1 of the FAA. The Court also finds that the Policy is a valid arbitration
16 agreement and encompasses the dispute over unpaid wages brought by Plaintiff. As a
17 result, under the FAA, the Court must enforce the Policy and compel arbitration of
18 Plaintiff’s claim against Nationstar pursuant to the Policy’s terms.

19 Nationstar also asks the Court to strike Plaintiff’s collective action claim in this
20 lawsuit because the Policy contains a prohibition on “joinder of parties” without the
21 consent of all parties to an arbitration proceeding and Nationstar does not consent to
22 joinder or collective arbitration. (Mot. at 8.) However, Nationstar raises the possibility
23 that the Policy’s collective arbitration provision may be invalid under certain case law.
24 (Mot. at 10-12.)

25 In an arbitration agreement, the parties can agree to delegate to an arbitrator any
26 question as to the enforceability of the arbitration agreement, and thus the question of
27 arbitrability itself can be arbitrated. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63,
28 68-69 (2010) (“The delegation provision is an agreement to arbitrate threshold issues

1 concerning the arbitration agreement. We have recognized that parties can agree to
2 arbitrate ‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to
3 arbitrate or whether their agreement covers a particular controversy.”) Under the terms of
4 the Policy, the arbitrator will have the power to determine the validity and enforceability
5 of an arbitration agreement before it. Specifically, the Policy provides that “all disputes”
6 between Nationstar and its employees “involving legally-protected or recognized rights”
7 are subject to final and binding arbitration under the JAMS Rules. (Doc. 12-1 Ex. 1.)
8 JAMS Rule 8 states, “Jurisdictional and arbitrability disputes, including disputes over the
9 formation, existence, validity, interpretation or scope of the agreement under which
10 Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to
11 and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction
12 and arbitrability issues as a preliminary matter.”

13 The Ninth Circuit has explicitly held that incorporation of arbitration rules such as
14 the JAMS Rules in an arbitration agreement “constitutes clear and unmistakable evidence
15 that contracting parties agreed to arbitrate arbitrability.” *Brennan v. Opus Bank*, 796 F.3d
16 1125, 1130 (9th Cir. 2015). This is in part because rules like the JAMS Rules include the
17 provision identified above that the arbitrator has the power to rule on his or her own
18 jurisdiction, including any objections with respect to the validity of the arbitration
19 agreement.¹ *Id.*

20 Pursuant to the FAA, the Court must compel arbitration of Plaintiff’s claim against
21 Nationstar under the terms of the Policy. Should the parties have a question as to the
22 validity of the Policy’s collective arbitration provision, the parties agreed in the Policy
23 that the arbitrator will have the power to resolve that question under the JAMS Rules.

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25 ¹ While *Brennan* addressed an agreement executed between “sophisticated”
26 parties, the court stated that its holding “should not be interpreted to require that the
27 contracting parties be sophisticated or that the contract be ‘commercial’” before a court
28 enforces a delegation provision. *Id.*; see also *Zenelaj v. Handybook, Inc.*, 82 F. Supp. 3d
968, 974 (N.D. Cal. 2015) (“[R]egardless of their sophistication, the Court finds that the
Parties in this case clearly and unmistakably delegated the question of arbitrability to the
arbitrator when they expressly incorporated [American Arbitration Association] Rules
into their Agreement.”); *Cayenne Med., Inc. v. MedShape, Inc.*, No. 2:14-CV-0451-HRH,
2015 WL 5363717, at *4 (D. Ariz. Sept. 15, 2015).

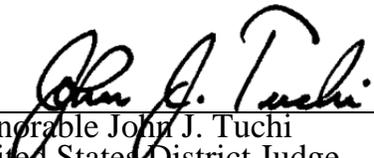
1 The Court will therefore deny Nationstar’s request to strike Plaintiff’s collective action
2 claim in deference to the arbitrator.

3 Lastly, the Court in its discretion will stay, not dismiss, Plaintiff’s claim against
4 Nationstar in this lawsuit. Under § 3 of the FAA, “the Court is required to stay
5 proceedings pending arbitration if the Court determines that the issues involved are
6 referable to arbitration under a written arbitration agreement.” *Meritage Homes Corp. v.*
7 *Hancock*, 522 F. Supp. 2d 1203, 1211 (D. Ariz. 2007); *see also AT&T Mobility, LLC v.*
8 *Concepcion*, 563 U.S. 333, 344 (2011) (stating the FAA requires courts to stay litigation
9 of claims subject to arbitration pending the outcome of the arbitration of those claims
10 under the terms of the arbitration agreement).

11 IT IS THEREFORE ORDERED granting in part and denying in part Defendant
12 Nationstar Mortgage LLC’s Motion to Dismiss, Strike Collective Action Claims, and
13 Compel Arbitration, or in the Alternative to Stay Proceedings (Doc. 12) and compelling
14 arbitration of Plaintiff’s claim against Nationstar in this matter under the terms of the
15 Arbitration Policy.

16 IT IS FURTHER ORDERED staying Plaintiff’s claim against Nationstar in this
17 matter pending a decision by the arbitrator. The parties shall file a joint status report
18 within one week of the arbitrator’s decision or by September 15, 2017, whichever is
19 sooner.

20 Dated this 3rd day of March, 2017.

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23 Honorable John J. Tuchi
24 United States District Judge
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