

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKJESSICA DENSON, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

DONALD J. TRUMP FOR PRESIDENT,
INC.,

Defendant.

ORDER

20 Civ. 4737 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff intends to seek class certification under Fed. R. Civ. P. 23(b)(2) and class-wide declaratory and injunctive relief to prevent enforcement of the non-disclosure and non-disparagement provisions of Defendant's Employment Agreement against anyone who signed the agreement. (See Dkt. No. 49 at 1)

Defendant asserts that the instant action cannot continue on a class basis because any putative class members will be bound by the Employment Agreement's arbitration provision, which does not permit class treatment. (Id. at 2) Plaintiff responds that Defendant has both expressly and impliedly waived its right to enforce the Employment Agreement's arbitration by electing to litigate this action in federal court and through its conduct in this action. (See Dkt. No. 53 at 1-4) Plaintiff further contends that class discovery and certification must precede any attempt to compel arbitration. (Id. at 4)

Defendant has not yet addressed Plaintiff's arguments that Defendant expressly and impliedly waived its right to enforce the Employment Agreement's arbitration provisions, or that any motion to compel arbitration must be made after class discovery and certification.

Accordingly, the parties will submit briefing on the extent to which the Employment Agreement's arbitration provision precludes class treatment of the instant action. The parties will submit briefs setting forth their positions by **May 18, 2021**. Responsive briefs will be due by **May 25, 2021**.

Dated: New York, New York
April 27, 2021

SO ORDERED.



Paul G. Gardephe
United States District Judge