

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

|                          |   |                                   |
|--------------------------|---|-----------------------------------|
| IN RE: H&R BLOCK         | ) | MDL No. 2474                      |
| IRS FORM 8863 LITIGATION | ) |                                   |
|                          | ) | Master Case No. 4:13-MD-02474-FJG |
| ALL ACTIONS.             | ) |                                   |

**ORDER**

Pending before the Court is Defendants' Motion to (1) Strike Class Allegations Relating to Putative Class Members Subject to Arbitration Agreements and (2) Enforce the Court's July 11, 2014 Order as to the Bullock Plaintiffs (Doc. No. 54).

**I. Background**

This multidistrict litigation includes fourteen putative class actions brought by certain named plaintiffs against Defendant HRB Tax Group, Inc. and certain affiliated companies (collectively, "H&R Block"). The named plaintiffs generally alleged that H&R Block was negligent in handling their 2012 tax returns because it improperly filled out or improperly transmitted IRS Form 8863.

Clients who had their 2012 tax returns prepared by H&R Block entered into contracts with H&R Block that covered the products and services provided to them, and also provided that if a dispute arose between them the dispute would be resolved through binding individual arbitration. Clients also waived any right to assert or participate in a class action lawsuit. Clients, however, were given the opportunity to opt out of arbitration and the class action waiver within the first 60 days after they entered into the contract. See Doc. No. 31, Ex. A, 2013 Tax Season – W2 Year 2012 Client Service Agreement ("2013 Tax Season CSA"). Specifically, the 2013 Tax Season CSA provides:

If a dispute arises between you and H&R Block, the dispute

shall be resolved through binding individual arbitration unless you opt out of this Arbitration Agreement using the process explained below.

\* \* \* \*

**You and H&R Block also agree that each may bring claims against the other in arbitration only in your or H&R Block's individual capacity and in so doing you and H&R Block hereby waive the right . . . to assert or participate in a class action lawsuit or class action arbitration, [or] . . . to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind.**

Doc. No. 31, Ex. A, 2013 Tax Season CSA (emphasis in original).

On July 14, 2014, the Court ordered the Bullock Plaintiffs (Kristen Bullock, Melissa and Ian Anderson, and Rachelle and Nigel Gayle) to individually arbitrate their claims against H&R Block. See Order, Doc. No. 40. The Court, however, found it premature to strike the allegations as to class members who had agreed to arbitrate their claims, as no consolidated complaint had been filed in this MDL action. Id.

On October 3, 2014, plaintiffs filed a Consolidated Amended Complaint (Doc. No. 46). Within this Consolidated Amended Complaint, the Bullock Plaintiffs seek to represent a class including only those individuals who did not opt out of arbitration. Doc. No. 46, ¶ 98. Defendants seek an order striking the allegations in paragraphs 98-103, 105, 107, 109-13, 115-17, 122, 124, 128, 130, 132, 135, 138, 142, 146, 148-49, 151-53, and the Prayer for Relief relating to the Bullock Class because those claims are subject to arbitration agreements that include class action waivers. Defendants also request an order staying the case as to the Bullock Plaintiffs.

## **II. Legal Standard**

Pursuant to the FAA, arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any

contract.” 9 U.S.C. § 2. The Eighth Circuit follows a two-step process in determining whether to compel arbitration. First, the Court determines whether a valid agreement to arbitrate exists between the parties. Second, the Court determines whether the specific dispute falls within the scope of that agreement. Kenner v. Career Educ. Corp., No. 4:11CV00997 AGF, 2011 WL 5966922, at \*3 (E.D. Mo. Nov. 29, 2011) (citing Pro Tech Indus., Inc. v. URS Corp., 377 F.3d 868, 871 (8<sup>th</sup> Cir. 2004).

Rule 23(d)(1)(D) provides that, in a class action suit, the court may issue an order which “require[s] that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly.” A motion to strike under this Rule allows the court to narrow or eliminate certain class allegations before a motion for class certification is filed. See, e.g., Pilgrim v. Universal Health Card, LLC, 660 F.3d 943, 949 (6th Cir. 2011); Lawson v. Life of the South Ins. Co., 286 F.R.D. 689, 695 (M.D. Ga. 2012); Hall v. Equity Nat’l Life Ins. Co., 730 F. Supp. 2d 936, 941-42 (E.D. Ark. 2010).

### **III. Defendants’ Motion to Strike Certain Allegations**

Defendants seek an order striking the allegations in the Consolidated Amended Complaint in paragraphs 98-103, 105, 107, 109-13, 115-17, 122, 124, 128, 130, 132, 135, 138, 142, 146, 148-49, 151-53, and the Prayer for Relief relating to the Bullock Class. Defendants note that, as the Court previously recognized in its July 11, 2014 Order, by signing and then failing to timely opt out of their arbitration agreements, the Bullock Plaintiffs agreed to binding individual arbitration. Order, Doc. No. 40, at 10-11. Therefore, defendants argue that permitting the Bullock Plaintiffs to pursue allegations relating to the class (and by extension, serving as class representatives) is directly at odds with this Court’s July 11, 2014 Order. This Court agrees, and finds that all

allegations concerning the Bullock Plaintiffs should be stricken. The Court also agrees with defendants' assertion that allowing the Bullock Plaintiffs to pursue allegations relating to a putative class made up solely of persons who signed agreements to individually arbitrate their cases would be in contravention of the FAA, as those class members would be bound to individually arbitrate their claims. See In re Online Travel Co. (OTC) Hotel Booking Antitrust Litig., 953 F.Supp. 2d at 725. The Court also finds that the Bullock Plaintiffs have not given reasons sufficient for the Court to postpone this decision, and the Court specifically finds that (1) the motion to strike is not premature; (2) defendants need not show prejudice in order for the subject allegations to be stricken; and (3) the motion to strike was not made pursuant to Fed. R. Civ. P. 12(f), and therefore is not the kind of motion that is considered disfavored under the Federal Rules.

Therefore, defendants' motion to strike (Doc. No. 54) is **GRANTED**.

#### **IV. Defendants' Motion to Stay**

Defendants also move for an order staying the case as to the Bullock Plaintiffs, because allowing those plaintiffs to pursue any claims outside the arbitration process would be duplicative. "The FAA provides that suits pending in federal court based on issues referable to arbitration 'shall [be] . . . stay[ed] . . . until such arbitration has been had.'" EEOC v. Woodmen of the World Life Ins. Soc'y, 479 F.3d 561, 570 (8<sup>th</sup> Cir. 2007). The Court finds that such a stay is necessary in this instance. Therefore, defendants' motion to stay pending arbitration (Doc. No. 54) is **GRANTED**.

#### **V. Conclusion**

For the reasons set forth in this order, defendants' motion (Doc. No. 54) is **GRANTED**. The allegations in the Consolidated Amended Complaint contained in paragraphs 98-103, 105, 107, 109-13, 115-17, 122, 124, 128, 130, 132, 135, 138, 142,

146, 148-49, 151-53, and the Prayer for Relief relating to the Bullock Class, are **STRICKEN**. The claims of Plaintiffs Kirsten Bullock, Melissa and Ian Anderson, and Rachelle and Nigel Gayle are **STAYED PENDING ARBITRATION**. As previously instructed (see Order, Doc. No. 40), the Bullock Plaintiffs and defendants remain **ORDERED** to submit, in 90-day intervals, joint status reports advising the Court on the progress of arbitration.

**IT IS SO ORDERED.**

Date January 7, 2015  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
United States District Judge