

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

PAMELA HERRINGTON, individually and on behalf of	)	
all others similarly situated	)	
	)	
Plaintiff(s),	)	
v.	)	Case No. 3:11-cv-00779-bbc
	)	
WATERSTONE MORTGAGE CORPORATION	)	
	)	
Defendant.	)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO COMPEL  
ARBITRATION AND MOTION FOR COSTS**

Now comes Defendant Waterstone Mortgage Corporation (hereinafter, "Waterstone"), by and through its undersigned counsel, and hereby moves this Court to dismiss the Complaint filed by Plaintiff in the above-captioned matter pursuant to Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, to compel arbitration, and to award costs in favor of Waterstone. In support thereof, Waterstone states as follows:

1. This matter arises out of Plaintiff's allegations that her employer, Waterstone, violated the Fair Labor Standards Act (hereinafter, "FLSA") by failing to pay Plaintiff overtime and a minimum wage. See, Complaint at ¶¶ 83 - 87. Plaintiff also alleges that Waterstone breached certain common law contract and/or quasi-contract obligations to Plaintiff by purportedly failing to pay her in accordance with the terms of her Employment Agreement, (hereinafter referred to as "Agreement").

2. Count I of Plaintiff's Complaint alleges a collective action for violations of the FLSA pursuant to 29 U.S.C. §216(b). Count II of Plaintiff's Complaint alleges a class action for contract and/or quasi-contract violations pursuant to F.R.Civ.P. 23.

3. However, the terms of the Agreement make unmistakably clear that "any dispute between the parties concerning the wages, hours, working conditions, terms, rights, responsibilities or obligations between them or arising out of their employment relationship shall be resolved through binding arbitration." See, the Agreement, attached hereto as Exhibit A, at ¶ 13. The Agreement specifically precludes collective actions and class actions in arbitration by stating, "Such arbitration may not be joined with or join or include any claims by any persons not party to this Agreement." Id.

4. Accordingly, this lawsuit should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1), as jurisdiction is not proper before this Court.

5. In the alternative, this Court should compel the parties to arbitrate the claims asserted in the Complaint pursuant to the terms of the Agreement.

6. Plaintiff should further be required to pay Waterstone's costs related to this Motion inasmuch as the Agreement provides that "Waterstone shall be entitled to the cost of all legal fees and expenses incurred in investigating and enforcing the covenants contained herein, including fees and expenses incurred prior to filing suit." See, Ex. A at ¶ 16; see also, Ex. A ¶ 8.

7. There are no disputes of material fact that would prevent the Court from granting this Motion to Dismiss or, in the Alternative, Motion to Compel Arbitration and Motion for Costs.

8. Waterstone's Memorandum of Law in Support of its Motion to Dismiss or, in the Alternative, Motion to Compel Arbitration and Motion for Costs is incorporated as if fully set forth herein.

WHEREFORE, the Defendant, Waterstone Mortgage Corporation, respectfully prays this Court enter an order DISMISSING the Complaint, or, in the alternative, compelling arbitration, as well as an order for its costs related to this Motion, and for such other and further relief as may be just and proper.

DATED: December 12, 2011

Respectfully submitted,

/s/  
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**CERTIFICATE OF SERVICE**

THIS WILL CERTIFY that on this 12th day of December 2011, a copy of the foregoing Motion to Dismiss or, in the Alternative, Motion to Compel Arbitration and Motion for Costs was electronically filed and delivered via CM/ECF to:

Dan Getman  
Matthew Dunn  
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*Attorneys for Plaintiff*

/s/  
Russell B. Berger