IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HORTONWORKS, INC.,	**:**	
Plaintiff,	**:**	**Case No. 2:18-CV-516**
v.	**:**	**Judge Graham**
ALEXANDER DAHER,	**:**	**Magistrate Judge Deavers**
Defendant.	**:**	

DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY PLAINTIFF'S ACTION

Defendant Alexander Daher, by and through his counsel, respectfully moves this Court for an order compelling arbitration of the claims made by Plaintiff Hortonworks Inc. in this action and either dismissing this case in its entirety, or, in the alternative, staying all proceedings pending completion of that arbitration. The grounds for this motion are fully set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Danny L. Caudill

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Defendant respectfully moves this Court to compel arbitration of Plaintiff's claims against him because Plaintiff is party to an arbitration agreement and has agreed to resolve, in final and binding arbitration, all covered disputes that Plaintiff may have against Defendant, including every cause of action now alleged in Plaintiff's Complaint. Defendant requests that upon the granting of this motion, the Court either dismiss this lawsuit or stay these proceedings pending the outcome of that arbitration.

II. FACTUAL BACKGROUND

On May 24, 2018, Plaintiff filed the instant lawsuit alleging five causes of action against Mr. Daher: Count 1 – Violation of Defend Trade Secrets Act under 18 U.S.C. § 1836(B)(1); Count 2 – Violation of Ohio Uniform Trade Secrets Act, Ohio Rev. Code §§ 1333.62, 1333.63; Count 3 – Breach of Contract (referencing Ohio law); Count 4 – Replevin, Ohio Rev. Code § 2737.01 *et seq.*; and, Count 5 – Conversion (referencing Ohio law). The gravamen of Plaintiff's Complaint is that Defendant has misappropriated and misused Plaintiff's proprietary information and trade secrets, and breached his employment agreements with Plaintiff.

The following recitation of facts is drawn from Plaintiff's Complaint. Plaintiff is a Delaware Corporation with its principal place of business located in Santa Clara, California. Compl. ¶ 3. Defendant in an individual, who resides in Dublin, Ohio and worked remotely for Plaintiff until he was terminated from his position as Solutions Engineer II on May 2, 2018. Compl. ¶ 4, 8. When he was hired by Plaintiff, Defendant signed a Proprietary Information and Inventions Agreement ("PIIA"), which purported to establish Plaintiff's rights to its proprietary information and trade

secrets. Compl. ¶ 10. Plaintiff attached the PIIA to its Complaint as Exhibit A and incorporated it into the Complaint by reference. Compl. ¶10; Exhibit A.

Included as an Appendix to the PIIA is a Mutual Arbitration Agreement. Compl. Exhibit A (Doc. No. 1, Page 26 of 88). The second paragraph of the Mutual Arbitration Agreement contains the following language:

> **Arbitration -** In consideration of your employment with Hortonworks, its promise to arbitrate all employment related disputes, and your receipt of the compensation, pay raises, and other benefits paid to you by Hortonworks, at present and in the future, you agree that any and all controversies, claims, or disputes with anyone (including Hortonworks and any employee, officer, director, or benefit plan of Hortonworks), arising out of, relating to, or resulting from your employment with us or the termination of your employment with us, including any breach of this agreement, shall be subject to binding arbitration under the arbitration rules set forth in California code of civil procedure section 1280 through 1294.2, including section 1281.8 (the "Act"), and pursuant to California law. The Federal Arbitration Act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the Act. Disputes that you and we agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims; provided, however, that any claims that may not be arbitrated under applicable law are not subject to this Mutual Arbitration Agreement. You expressly understand that this agreement to arbitrate also applies to any disputes that Hortonworks may have with you.

In addition to providing a timely and cost-efficient method to resolve employment disputes, the Mutual Arbitration Agreement also preserves many of the procedural and substantive rights and remedies Plaintiff is afforded in a traditional litigation setting. For example, the Parties are entitled to a neutral adjudicator, which is an arbitrator selected from a panel provided by the JAMS Mediation and Arbitration Service ("JAMS"). Compl. Exhibit A (Doc. No. 1, Page 26 of 88). The

Mutual Arbitration Agreement also requires that the arbitration proceed according to JAMS' Employment Arbitration Rules and Procedures and the California Code of Civil Procedure, under which parties are permitted to engage in meaningful discovery, including the production of documents and the right to take depositions. Compl. Exhibit A (Doc. No. 1, Page 26 of 88). Finally, the scope of Plaintiff's possible relief under the Mutual Arbitration Agreement is the same as it would be in a court of law. Compl. Exhibit A (Doc. No. 1, Page 26 of 88) ("You agree that the arbitrator shall have the power to award any remedies available under applicable law….").

Despite the fact Plaintiff's claims are covered by the Mutual Arbitration Agreement, Defendant voluntarily cooperated with Plaintiff's demand to examine his personal electronic devices (See Doc. No. 10, Agreed Standstill Order) in the hope that doing so would avoid the expense of the TRO hearing, which had been previously scheduled for May 30, 2018, and persuade Plaintiff to dismiss its claims. Although Defendant has turned over all devices demanded by Plaintiff for forensic examination, Plaintiff has still not dismissed its claims and is now requesting to take Defendant's deposition. Furthermore, the date by which Defendant must file a responsive pleading or motion to Plaintiff's Complaint (July 6, 2018) has arrived, forcing Defendant to decide whether he will exercise his contractual right to arbitrate Plaintiff's claims.[1] Defendant chooses to exercise that contractual right. Because Plaintiff's consent to arbitration of the disputes set forth in the

[1] Although many courts consider a motion to compel arbitration as satisfying a litigant's duty to file a responsive pleading or motion, the issue appears to be technically unsettled. See Praxis Capital & Inv. Mgmt. Ltd. v. Gemini Holdings I, LLC, No. 2:15-cv-2912, 2016 U.S. Dist. LEXIS 64090 (S.D. Ohio, May 16, 2016). Accordingly, Defendant is filing his Answer to Plaintiff's Complaint, also raising the arbitration agreement and choice of law provisions as affirmative defenses, contemporaneously with the filing of this motion to compel and dismiss. Defendant does this for the express purpose of avoiding the possibility of a default judgment and not to signal an intention to waive his contractual right to arbitration.

Complaint is binding, Defendant respectfully moves the Court to issue an Order compelling Plaintiff to submit its claims to arbitration and dismissing this case.

III. LAW AND ARGUMENT

A. The Federal Arbitration Act Requires The Enforcement Of The Parties' Mutual Agreement To Arbitrate Disputes

Since adoption of the Federal Arbitration Act ("FAA" or "Act"), the federal courts have supported the use of agreements to resolve matters through mandatory arbitration. "That Act was designed to quell the traditional common-law hostility to arbitration clauses and to ensure enforcement of such agreements." Orcutt v. Kettering Radiologists, Inc., 199 F.Supp.2d 746 (S.D. Ohio 2002); citing, Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 105 S.Ct. 1238 (1985). The FAA establishes a liberal public policy in favor of arbitration. See EEOC v. Waffle House, Inc., 534 U.S. 279, 289 (2002). "Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24, (1983).

The United States Supreme Court has held broadly that parties may agree to submit to arbitration claims based on statutory rights. See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (July 2, 1985). Furthermore, there is no doubt that employment-related statutory claims may be subject to an individual arbitration agreement enforceable under the FAA. In Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), the United States Supreme Court confirmed that statutory rights may be subject to compulsory arbitration under a binding agreement. Gilmer, 500 U.S. at 25-26. As the Supreme Court explained: [b]y agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute; it

only submits to their resolution by an arbitral, rather than judicial, forum. It trades the procedures and opportunity for a view of the courtroom for the simplicity, informality, and expedition of arbitration. Id. at 26; see also Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 123 (2001) (rejecting the "supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context"). In keeping with this view, "courts routinely refer claims for misappropriation of trade secrets to arbitration." Simula, Inc. v. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999)(citing Mitsubishi Motors, 473 U.S. at 627).

Pursuant to Gilmer, courts in the Sixth Circuit have compelled arbitration of an employee's statutory employment claims on numerous occasions. See e.g., Willis v. Dean Witter Reynolds, Inc., 948 F.2d 305, 310 (6th Cir. 1991) (extending the holding of Gilmer to claims arising under Title VII and compelling arbitration discrimination claims where employee agreed to arbitrate "any dispute, claim or controversy" with the employer); Brinkerhoff v. Zachry Construction Corp., No. 2:04-CV-750, 2005 U.S. Dist. LEXIS 33333, **15-17 (S.D. Ohio July 15, 2005) (dismissing plaintiff's FMLA claims because they were subject to arbitration); Manuel v. Honda R & D Americas, Inc., 175 F. Supp.2d 987, 998 (S.D. Ohio 2001) (sexual harassment and retaliation claims compelled to arbitration). There appears to be no legal support for the notion that an employer's statutory claims should be treated any differently. Thus, Plaintiff's agreement to arbitrate its claims is enforceable.

B. The Arbitration Policy Is Valid And Binding

In both Ohio and California, a contract is created if there is an offer, acceptance and consideration.[2] Under the unequivocal terms of the Mutual Arbitration Agreement, and in exchange for Plaintiff's agreement to arbitrate disputes under the Mutual Arbitration Agreement, Defendant offered, and Plaintiff accepted, Defendant's services as an employee, continued service as an employee and a mutual promise to resolve covered disputes through final and binding arbitration. Indeed, it was Plaintiff that drafted and proposed the Mutual Arbitration Agreement in the first place.

The Agreement was supported by sufficient consideration. Under Ohio law, "valuable consideration may consist of either a detriment to the promissee or a benefit to the promissor." See, e.g., Ford v. Tandy Transp., 86 Ohio App.3d 364, 384 (Ohio Ct. App. 1993). Such offers of continued employment are sufficient legal consideration to support the Parties' agreement to arbitrate their employment-related disputes. See Lake Land Employment Group of AK-RON, LLC v. Columber, 101 Ohio St.3d 242, 248 (2004) (continued employment is sufficient consideration where the employer continues an at- will employment relationship that could legally be terminated without cause). Moreover, the Parties' mutual promises to arbitrate any covered dispute provide independent consideration for the obligations imposed by the Arbitration Policy. See, e.g., Stewart v. Herron, 77 Ohio St. 130, 146 (1907) ("[a]mong the considerations recognized in law as sufficient to support a contract, is that of mutual promises, or as it is sometimes expressed, a promise for a promise."). Because the Arbitration Policy requires both Parties to utilize

[2] Both the PIIA and the Mutual Arbitration Agreement provides for California choice of law.

arbitration to resolve employment-related disputes, it is supported by consideration and is therefore a valid, binding agreement.

C. Plaintiff's Claims Are Subject To Arbitration Under The Mutual Arbitration Agreement

Before compelling a party to arbitrate, the Court must engage in a limited review to determine whether the dispute is subject to arbitration. Pursuant to Gilmer, the Court should apply a strong presumption in favor of arbitration when considering whether Plaintiff's claims fall within the scope of an arbitration agreement. See Gilmer, 500 U.S. at 23. Additionally, "[a]bsent some ambiguity in the agreement…, it is the language of the contract that defines the scope of disputes subject to arbitration." Waffle House, 534 U.S. at 289.

Plaintiff asserts claims against Defendant for violations of federal and Ohio trade secrets laws, breach of contract under Ohio law, replevin under the Ohio Revised Code and conversion under Ohio law. (See generally Complaint). All of these claims fit squarely within the Mutual Arbitration Agreement, which covers all claims "all claims arising out of, relating to, or resulting from your employment with us or the termination of your employment with us, including any breach of this agreement." Because all of Plaintiff's claims against Defendants arise out of, relate to, or result from Defendant's employment with Plaintiff, they are subject to arbitration under the Mutual Arbitration Agreement.

D. Because Plaintiff's Claims Are Arbitrable Under The Mutual Arbitration Agreement, This Action Should Be Dismissed

Finally, courts in this Circuit regularly dismiss cases subject to arbitration where there "is nothing left for the district court to do but execute judgment." Orcutt, 199 F.Supp.2d at 756-757; Stout v. Byrider, 50 F. Supp. 2d 733, 741 (N.D. Ohio 1999) (dismissing the case because all the

issues would be decided during arbitration). In this case, all of Plaintiff's claims fall squarely within the scope of the arbitration provisions in the Mutual Arbitration Agreement, and will be resolved in the course of the arbitration. Accordingly, the case should be dismissed rather than stayed.

IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court dismiss Plaintiff's Complaint in its entirety. In the alternative, Defendant requests that this Court compel arbitration and stay all proceedings pending completion of arbitration.

Respectfully submitted,

/s/ Danny L. Caudill

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Trial Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2018 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Danny L. Caudill
Danny L. Caudill (0078859)