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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re: ANTHONY SCOTT LEVANDOWSKI, *Debtor*.	Case No. 20-30242 (HLB) Chapter 11 **UBER TECHNOLOGY INC.'S RESPONSE TO ANTHONY LEVANDOWSKI'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: April 30, 2020 Time: 10:00 a.m. Crtrm: 19 Judge: Hon. Hannah L. Blumenstiel

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I. INTRODUCTION

Uber agrees to arbitrate its indemnification dispute with Levandowski, and therefore does not oppose the ultimate relief sought in the Motion to Compel Arbitration (Dkt #18) (the "Motion[1]"); however, it is important that Uber responds to the Motion for two reasons. First, there are many factual inaccuracies asserted by Levandowski in the Motion. In response, Uber has set forth the facts regarding the disputes so that the Court and parties in interest are not misled by the assertions made in the Motion and the Court has a full picture of the nature of the disputes between the parties.

Second, Uber rescinded the Indemnification Agreement several months prior to the inception of Levandowski's bankruptcy case because it was procured by his fraud. Accordingly, any determination about Uber's rescission of the Indemnification Agreement should be fully preserved and determined in the arbitration. Because Uber agrees to arbitrate the dispute over its rescission of the Indemnification Agreement as well as all other issues relating to the indemnification disputes, the Court should enter an order denying Levandowsi's motion as moot.

II. FACTUAL STATEMENT

A. To Induce Uber to Acquire His Company and Enter Into the Indemnification Agreement, Levandowski Repeatedly Told Uber He Was Not Bringing any Google Confidential Information With Him.

In the fall of 2015, Uber and Levandowski began discussions regarding a potential commercial deal between Uber and the new company that Levandowski was planning to form, which eventually became Ottomotto LLC ("Otto"). By February 22, 2016, Uber and Levandowski had entered into a non-binding term sheet for Uber's acquisition of Otto. Prior to agreeing to the transaction, Uber and Otto, through their outside lawyers, hired a third-party forensic investigator, Stroz Friedberg, to gather facts and documents to confirm and ensure that Levandowski (and others) did not bring any proprietary or confidential Google material to Otto, and would not bring any such information to Uber.

As part of this Stroz process, Levandowski (and the other diligenced employees at Otto) expressly promised that "to my best knowledge I returned to Former Employer and have not retained

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[1] To the extent not otherwise defined herein, all defined terms shall have the meaning ascribed to them in the Motion.

Former Employer confidential or proprietary documents or information or property (including but not limited to hardware and software) after my employment with Former Employer." *See* Ex. 1 at ¶ 4.[2] Levandowski further attested that he "provided good faith, complete and truthful responses in all material respects to Stroz's questions" and "that all of the information I have provided to Stroz is true and correct in all material respects." *Id.* at ¶ 6.

Once Uber decided to move forward with the acquisition, it required Levandowski to sign a written employment agreement, which provided that "you shall not use or disclose any trade secrets or other proprietary information or intellectual property in which you or any other person has any right title or interest" and that "You represent and warrant to the Company that you have returned or destroyed all property and confidential information belonging to any prior employer." Levandowski also signed a Confidential Information and Invention Assignment Agreement pursuant to which he promised "I will not disclose to the Company or use any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or other party. I will not induce the Company to use any inventions, confidential or non-public proprietary information, or material belonging to any previous client, employer or any other party."

The provisions in these agreements reflected and confirmed Uber's clear understanding that Levandowski and everyone else from Otto had no intention of bringing any confidential Google information to Uber, would never do any such thing, and had taken no steps to do any such thing.

Uber relied on these assurances from Levandowski when it entered into the April 11, 2016, Indemnification Agreement.[3] If Uber had known that Levandowski had deliberately downloaded Google confidential trade secrets to use those secrets while at Uber, then Uber would not have completed the Otto acquisition, and would not have entered into the Indemnification Agreement.

[2] All exhibits are attached to the Declaration of Hamish Hume.

[3] The agreement was executed by an Uber subsidiary named Apparate International, which has since been dissolved.

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