IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOHN LYNCH AND DAXTON HARTSFIELD, Individually and for Others similarly situated,	§	
PLAINTIFFS,	§	**CASE NO. 1:22-CV-00597**
v.	§	
TESLA, INC.,	§	
DEFENDANT.	§	

DEFENDANT'S MOTION TO DISMISS AND COMPEL INDIVIDUAL ARBITRATION UNDER RULE 12(B)(1) or 12(B)(3)

Tesla moves to dismiss and compel Plaintiffs John Lynch and Daxton Hartsfield's claims to individual arbitration under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(3) because both signed binding arbitration agreements containing class action waivers—as did all of the individuals in the putative class Plaintiffs seek to represent.

Plaintiffs entered into the subject arbitration agreements over three years prior to initiating this lawsuit. Hartsfield also entered into an enforceable separation agreement with Tesla before he filed this lawsuit, in which he released the claims he now asserts here and also agreed for a second time to arbitrate all employment-related claims against Tesla.

The above facts are indisputable and Plaintiffs' claims in this case are baseless. Tesla engages in a bi-annual process of right-sizing its workforce and discharging low performing employees—like Plaintiffs. As part of this process, Tesla always ensures compliance with the Worker Adjustment Retraining Notification ("WARN") Act. Here, Plaintiffs were not discharged as part of a WARN triggering event and were not entitled to WARN notice—which Tesla will demonstrate when this case is properly compelled to individual arbitration.

I. BACKGROUND

For at the least the past 15 years, Tesla has entered into mutual binding arbitration agreements with all of its employees. *See* Exhibit A (Decl. of Benjamin Flesch) at ¶ 3. Plaintiffs are no exception. On May 29, 2017, Tesla sent Lynch an offer for a Maintenance Technician position that contains an arbitration provision. *See* Exhibit A-1. On August 28, 2017, Tesla sent Hartsfield a similar offer letter for a Quality Technician position that contains an identical arbitration provision. *See* Exhibit A-2.

The arbitration provision in the offer letters is broad and provides that Plaintiffs and Tesla mutually agree that "any and all disputes, claims, or causes of action, in law or equity, arising from or relating to [Plaintiffs'] employment, or the termination of ["Plaintiffs'] employment, will be resolved, to the fullest extent permissible, by ***final, binding and confidential arbitration*** . . . ." *See* Exhibit A-1 & A-2 at p. 3 (emphasis in original). Tesla and Plaintiffs also mutually agreed to waive the right to bring or participate in a class action as the arbitration provision provides, "any claim, dispute, or cause of action must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding." *Id*.

Lynch electronically signed and accepted the offer letter and agreed to be bound by the arbitration provision on June 16, 2017.


Electronic Signature

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Filling in the following information will constitute your eSignature and will have the same legal impact as signing a printed version of this document.

Password Verified

Name: John Lynch
Date: 6/16/17 (m/d/yy)
Signature ID: NLHF3HOOIN9-825331VFN

Powered by Taleo

See Exhibit A-1 at p. 8.

Hartsfield signed and accepted the offer letter and agreed to be bound by the arbitration provision on August 28, 2017. *See* Exhibit A-2 at p. 8.

See Exhibit A-2 at p. 8.

As reflected in the above signatures, Plaintiffs received and signed the offer letters through the Taleo system. *See* Exhibit A at ¶¶ 5–8. Tesla used the Taleo system at the time Plaintiffs were hired to manage the application and onboarding process for its employees. *Id*. Plaintiffs, like all applicants at the time, created Taleo accounts using their first names, last names, personal e-mail addresses, and telephone numbers. *Id*. at ¶ 5. They then created their own unique user names and passwords to access the Taleo system and upload their resumes and receive communications from Tesla, including their offer letters. *Id*. Plaintiffs also accepted and electronically signed their offer letters through the Taleo system by clicking on a button entitled "Accept and eSign offer." *Id*. at ¶ 6. They were then required to enter their name, last name, email address, and unique, individually created passwords to further confirm their acceptance of their respective offer letters. *Id*. Once accepted, a unique signature ID was also affixed by the Taleo system to the header of every page of the offer letters, which shows that those pages were presented to Plaintiffs for review before they electronically signed and accepted the terms of the letters. *Id*. at 7–8.

II. Standard of Review

The Fifth Circuit Court of Appeals has not definitively decided whether a pre-answer motion to compel arbitration should be brought under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(3) and Tesla, therefore, asserts this Motion under both rules. *See Gilbert v. Donahoe*, 751 F.3d 303, 307 (5th Cir. 2014) ("We have held that a district court lacks subject matter jurisdiction over a case and should dismiss it pursuant to Federal Rule of Civil Procedure 12(b)(1) when the parties' dispute is subject to binding arbitration.") (internal citations omitted); *Lim v. Offshore Specialty Fabricators, Inc.*, 404 F. 3d 898, 902 (5th Cir. 2005) (noting that "circuits are split on the issue of whether Rule 12(b)(1) or 12(b)(3) is the proper motion for seeking dismissal based on a forum selection or arbitration clause," but electing to analyze the subject motion to compel arbitration under Rule 12(b)(3) because "our court has accepted Rule 12(b)(3) as a proper method for seeking dismissal based on a forum selection clause . . . .").

Under Rule 12(b)(1), the burden "is on the party asserting jurisdiction" to "prove by a preponderance of the evidence that the court has jurisdiction based on the complaint and the evidence." *Donahoe*, 751 F.3d at 303. Similarly, once venue is challenged under Rule 12(b)(3), "the burden is on the plaintiff to establish that the district he chose is a proper venue." *Asevedo v. NBCUniversal Media, LLC*, 921 F. Supp. 2d 573, 589 (5th Cir. 2013). The Court can find that personal jurisdiction is lacking under Rule 12(b)(1), or that venue is improper under Rule 12(b)(3), based on: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Ballew v. Continental Airlines, Inc.*, 668 F.3d 777, 781 (5th Cir. 2012); *In re FEMA Trailer Formaldehyde Products Liability Litigation (Mississippi Plaintiffs)*, 668 F.3d 281, 286 (5th Cir. 2012).

III. ARGUMENT

A. As Mandated by the Federal Arbitration Act Plaintiffs' Claims Should be Dismissed and Compelled to Arbitration under Either Rule 12(b)(1) or 12(b)(3).

The Federal Arbitration Act ("FAA"), which governs the subject arbitration provision, provides that "pre-dispute 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.'"[1] *Carter v. Countrywide Credit Indus., Inc.*, 362 F.3d 294, 297 (5th Cir. 2004) (quoting 9 U.S.C. § 2.). The FAA permits an aggrieved party to file a motion to dismiss and compel arbitration when an opposing "party has failed, neglected, or refused to comply with an arbitration agreement." *See American Bankers Ins. Co. of Florida v. Inman*, 436 F.3d 490, 493 (5th Cir. 2006) (citing 9 U.S.C. § 4).

"Federal courts have supported a strong policy in favor of arbitration." *Lim v. Offshore Specialty Fabricators, Inc.,* 404 F.3d 898, 906 (5th Cir.2005). Accordingly, "there is a strong presumption in favor of arbitration and a party seeking to invalidate an arbitration agreement bears the burden of establishing invalidity." *Carter*, 362 F.3d at 297. Further, "any doubt concerning the scope of arbitrable issues should be resolved in favor of arbitration" and "individuals seeking to avoid the enforcement of an arbitration agreement face a high bar." *Id.*; *Moses H. Cone Mem. Hosp., v. Mercury Const. Corp.*, 460 U.S. 1, 24-25 (1983).

Courts employ a two-step process in assessing a motion to compel arbitration. *Jones v. Halliburton Co.*, 583 F.3d 228, 233 (5th Cir. 2009). At step one, the Court considers merely

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[1] The FAA applies to contracts "evidencing a transaction involving commerce" and "[t]he requirement that the underlying transaction involve commerce 'is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause.'" See 9 U.S.C. § 2; *Moses H. Cone Memorial Hosp*., 460 U.S. 1, 24, (1983). It is beyond dispute that the offer letters containing the arbitration agreements here and Plaintiffs employment with Tesla involve interstate commerce as, among other things, Tesla distributes products from its various locations through the normal channels of interstate commerce and Plaintiffs worked on products and used materials in the course of their employment that were both received from and shipped to states outside of the state in which they worked. *See* Exhibit

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