CAUSE NO. 2015-CCV-60202-1

RUSSELL HOUSE	§	**IN THE COUNTY COURT**
	§	
Plaintiff	§	
	§	
vs.	§	**COUNTY COURT NUMBER #1**
	§	
LITHIA MOTORS SUPPORT SERVICES, INC., LITHIA CORPUS CHRISTI, INC. d/b/a LITHIA DODGE OF CORPUS CHRISTI, and MUNIZ ELECTRICAL MASTERS, INC.	§	
	§	
Defendants.	§	**NUECES COUNTY, TEXAS**

AMENDED MOTION TO STAY PROCEEDINGS AND COMPEL ARBITRATION BY DEFENDANT LITHIA CORPUS CHRISTI, INC. d/b/a LITHIA DODGE OF CORPUS CHRISTI

To the Honorable Court:

Defendant Lithia Corpus Christi, Inc. d/b/a Lithia Dodge of Corpus Christi ("Lithia Dodge") files this Motion to Stay Proceedings and Compel Arbitration and shows the Court as follows:

I. Introduction

This is a nonsubscriber workplace injury case. In his Second Amended Petition ("Petition"), Plaintiff Russell House ("House") asserts claims against Lithia Dodge arising out of his employment with that company, including tort claims for negligence and premises liability. At all times during his employment with Lithia Dodge, including on the date of his accident, House was a party to written arbitration agreements that cover all of his claims against Lithia Dodge. Accordingly, the Court should stay this action and compel House to arbitrate his claims against Lithia Dodge pursuant to the terms of the parties' written arbitration agreements.

II. Factual Background

Lithia Motors, Inc. ("Lithia Motors") is a nationwide automotive dealership network headquartered in Medford, Oregon. (Ex. A, Affidavit of Sherry Downey at ¶ 4 ["Downey Aff."]) Defendant Lithia Dodge is one of the dealerships in that network. (*Id.*) On December 5, 2005, House began his job as manager of the Lithia Dodge dealership in Corpus Christi, Texas. (*Id.* ¶ 5; Ex. B, Deposition of Russell House ["House Dep.] at 165:21-24, *see* 166:4-8) Lithia Dodge is the only Lithia Motors entity that ever employed House. (Ex. A, Downey Aff. ¶ 4; Ex. B, House Dep. 166:18-167:5) When he began his employment with Lithia Dodge, as a condition of his employment, House and Lithia Dodge executed a Comprehensive Agreement Employment At-Will and Arbitration ("2005 Agreement"). (Ex. A, Downey Aff. ¶ 5 & Ex. A-1) In the 2005 Agreement, House agreed as follows:

> I also acknowledge that the Company promotes a system of alternative dispute resolution which involves *binding arbitration to resolve all disputes* which may arise out of the employment context. Because of the mutual benefits . . . which private binding arbitration can provide both the Company and myself, *I voluntarily agree that any claim, dispute, controversy and/or cause of action that arises out of, or that relates in any way* to [my] application for employment, *terms and conditions of employment*, employments rights under state, federal and/or common laws, or termination of employment by the Company shall be submitted to and determined exclusively by binding arbitration. *This includes but is not limited to . . . any claim arising out of any . . . state statute or law which would otherwise require or allow resort to any court . . . between myself and the Company (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the Company, whether based on tort, contract, statutory, or equitable law.*

(Ex. A at 2 & Ex. A-1 [emphasis added])

Eight years after House began working for Lithia Dodge, the company distributed to its employees, including House, copies of the "Lithia Auto Stores 2013/2014 Handbook" ("2013 Agreement"). (Ex. A, Downey Aff. ¶ 6 & Ex. A-2) That handbook included a section entitled

Comprehensive At-Will Employment & Arbitration Agreement, which reiterated, with only minor modifications, the identical language quoted above from the 2005 Agreement. (Ex. A-2 at 56-58)

On June 13, 2013, House executed an Acknowledgment of Receipt of 2013/14 Employee Handbook in which he agreed that he had "received and read the Lithia Employee Handbook." ("2013 Acknowledgment") (Ex. A, Downey Aff. ¶ 7, Ex. A-3; Ex. C, Defendant's Second Request for Admissions to Plaintiff and Plaintiff's Responses to Defendant's Second Request for Admission to Plaintiff at 3) The 2013 Acknowledgment further states:

> I also acknowledge that the Company utilizes a system of alternative dispute resolution that involves binding arbitration to resolve all disputes which may arise out of the employment context and I agree to abide by the terms and conditions of our Comprehensive At-Will Employment & Arbitration Agreement as set forth in the Handbook.

(Ex. A, Downey Aff. ¶ 7, Ex. A-3) House continued to work for Lithia Dodge after executing both the 2005 and 2013 Agreements. (*See* Ex. B, House Dep. 166:4-23) And despite the clear and unambiguous language of those agreements requiring arbitration, House instead initiated this lawsuit against Lithia Dodge and asserted claims for negligence, gross negligence, and products liability following an alleged workplace injury House claims to have suffered. Because House agreed to arbitrate any such claims against Lithia Dodge, the Court should compel House to bring his claims against Lithia Dodge in arbitration and stay the claims against the company in this action.

III. Argument

A. The Federal Arbitration Act Applies Here.

Because both arbitration agreements expressly provide that they will be governed by the Federal Arbitration Act, the FAA governs House's claims. (Ex. A-1 ¶ 2, Ex. A-2 at 56 ¶ 2 ["The

claims outlined shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act."]) "When parties have designated the FAA to govern their arbitration agreement, their designation should be upheld." *In re Int'l Bank of Commerce*, No. 13-07-693-CV, 2008 WL 192260, at *6 (Tex. App.—Corpus Christi Jan. 18, 2008, orig. proceeding); *see In re AdvancePCS Health L.P.*, 172 S.W.3d 603, 606 & n.3 (Tex. 2005) (orig. proceeding).

The FAA provides that a "written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. Texas courts routinely enforce arbitration agreements falling within the FAA. *See, e.g.*, *In re Nexion Health at Humble, Inc.*, 173 S.W.3d 67, 68-69 (Tex. 2005) (orig. proceeding); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Wilson*, 805 S.W.2d 38, 40 (Tex. App.—El Paso 1991, no writ). Indeed, "[a]rbitration of disputes is strongly favored under federal and state law." *Prudential Sec., Inc. v. Marshall*, 909 S.W.2d 896, 898 (Tex. 1995) (orig. proceeding). As the Texas Supreme Court has observed, "[o]nce a party seeking to compel arbitration establishes that an agreement exists under the FAA, and that the claims raised are within the agreement's scope, the trial court 'has no discretion but to compel arbitration and stay its proceedings pending arbitration.'" *Cantella & Co., Inc. v. Goodwin*, 924 S.W.2d 943, 944 (Tex. 1996) (orig. proceeding) (quoting *Shearson Lehman Bros., Inc. v. Kilgore*, 871 S.W.2d 925, 928 (Tex. App.—Corpus Christi 1994, orig. proceeding)). Because arbitration is strongly favored, "every reasonable presumption favoring arbitration will be accepted." *Sw. Heath Plan, Inc. v. Sparkman*, 921 S.W.2d 355, 357-58 (Tex. App.—Fort Worth 1996, no writ).

Thus, when considering a motion to compel arbitration, the Court must address two questions: (1) whether there is a valid agreement to arbitrate between the parties; and (2)

whether the dispute in questions falls within the scope of the arbitration agreement. *Rachal v. Reitz,* 403 S.W.3d 840, 843 (Tex. 2013); *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 227 (Tex. 2003); *Kilgore*, 871 S.W.2d at 928.[1] Both requirements are satisfied here. As discussed below, the arbitration agreements are valid and enforceable. Further, they clearly encompass all of House's claims against Lithia Dodge. Therefore, the Court should compel arbitration in accordance with the parties' agreements and stay the claims against Lithia Dodge.

B. The Agreements Are Valid and Enforceable under the FAA.

In determining an arbitration agreement's validity, a court must construe the agreement as it would interpret contracts generally under state law. *Venture Cotton Co-op. v. Freeman,* 435 S.W.3d 222, 227 (Tex. 2014); *In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 676 (Tex. 2006) (orig. proceeding). In Texas, an employer may enforce an arbitration agreement against an at-will employee if the employee received notice of the employer's arbitration policy and accepted it. *See In re Dallas Peterbilt, Ltd.*, 196 S.W.3d 161, 162 (Tex. 2006) (orig. proceeding). Additionally, the arbitration agreement must be supported by consideration. *Palm Harbor*, 195 S.W.3d at 676. Both arbitration agreements here satisfy these requirements.

1. House had notice of and accepted both agreements.

The law is clear that "an at-will employee who receives notice of an employer's arbitration policy and continues or commences employment accepts the terms of the agreement as a matter of law." *D.R. Horton, Inc. v. Brooks*, 207 S.W.3d 862, 867 (Tex. App.—Houston [14th Dist.] 2006, no pet.). That is precisely what happened here. In 2005, Lithia Dodge presented the 2005 Agreement to House as a condition of his employment. (Ex. A, Downey Aff.

[1] "[W]hen, as here, the parties agree to arbitrate under the FAA," the party moving to compel arbitration is "not required to establish that the transaction at issue involves or affects interstate commerce." *In re Kellogg Brown & Root*, 80 S.W.3d 611, 617 (Tex. App.—Houston [1st Dist.] 2002, orig. proceeding). Regardless, the transaction at issue here plainly does. (Ex. A, Downey Aff. ¶ 9)

¶ 5) House admits that the signature on the agreement "looks like" his signature, and Sherry Downey confirms that House executed the 2005 Agreement. (Ex. A, Downey Aff. ¶ 5; Ex. B, House Dep. 175:18-176:13 & Ex. 12) Lithia's forensic handwriting expert, Linda James, B.C.D.E., also confirms that the 2005 Agreement was executed by the same person who signed all other documents that she examined from House's personnel files, including those that House unequivocally admits signing. (Ex. D, Affidavit of Linda James at 5, Statement of Opinions)[2] House thus accepted the terms of the 2005 Agreement when he executed it and began working for Lithia Dodge. *See D.R. Horton*, 207 S.W.3d at 867 ("by signing the [arbitration agreement] and commencing employment, Brooks accepted the terms of this arbitration provision as a matter of law, and a valid agreement to arbitrate was formed."). Accordingly, House had notice of and accepted the terms of the 2005 Agreement.

Similarly, House had notice of and accepted the terms of the arbitration agreement contained in the 2013-14 handbook. The Texas Supreme Court's analysis in *In re Peterbilt* is instructive. *In re Peterbilt*, 196 S.W.3d 161. In that case, an employee received a written summary of the company's binding arbitration policy and executed an acknowledgment stating that he had received the summary and understood that he was relinquishing his right to resolve covered claims by litigation. *Id.* at 162. The Court held that, by executing the acknowledgment, the employee had accepted the terms of the arbitration policy. *Id.* at 163.

As in *In re Peterbilt*, Lithia Dodge provided House with an employee handbook, and House executed an acknowledgment stating that he had "received and read" the handbook and

[2] Ex. A to the James Affidavit lists all the documents she examined from House's personnel file, including document number E-13, the 2005 Agreement, and document number E-49, the 2013 Acknowledgment. After examining those documents, James opined that it is "highly probable" that the signatures found within his employee files are genuine and that they were all signed by the same person. House admitted executing the 2013 Acknowledgment. (Ex. C, Defendant's Second Request for Admissions to Plaintiff and Plaintiff's Responses to Defendant's Second Request for Admission to Plaintiff at 3) The 2005 Agreement and 2013 Acknowledgment are included under Ex. C to the James Affidavit.

also that he agreed to be bound by Lithia Dodge's arbitration policy that requires employees and the company "to resolve all disputes which may arise out of the employment context" by arbitration. (Ex. A, Downey Aff. ¶ 5 & Ex. A-3) House admits that he signed the acknowledgement. (Ex. C, Defendant's Second Request for Admissions to Plaintiff and Plaintiff's Responses to Defendant's Second Request for Admission to Plaintiff at 3) Lithia Dodge thus offered and House received notice of and accepted the arbitration agreement. *See Peterbilt*, 196 S.W.3d at 163.

2. Both arbitration agreements are supported by mutual consideration.

Moreover, both agreements are supported by mutual consideration. The Texas Supreme Court has held that "consideration may take the form of bilateral promises to arbitrate." *Palm Harbor*, 195 S.W.3d at 676; *see In re Halliburton*, 80 S.W.3d 566, 569-70 (Tex. 2002) (orig. proceeding).

Here, the two arbitration agreements are supported by bilateral promises to arbitrate. In both agreements, the parties mutually agreed to arbitrate all employment related disputes. Specifically, both agreements recite: "I understand that by voluntarily agreeing to this binding arbitration provision, both I and the company give up our rights to trial by jury." (Exs. A-1 ¶ 6, A-2 at 57 ¶ 6) Both agreements also provide that "the Company promotes a system of alternative dispute resolution which involves binding arbitration to resolve *all disputes which may arise out of the employment context*." (Ex. A-1 ¶ 2, Ex. A-2 at 56 ¶ 2) The agreements further describe "the mutual benefits (such as reduced expense and increased efficiency) which binding arbitration can provide *both the Company and* [House]." (*Id.*) In addition, the 2013 Agreement states, "*the Company and I* voluntarily agree that any claim, dispute, controversy and/or cause of action that arises out of, or that relates in any way to the Employee's . . . terms

and conditions of employment . . . shall be submitted to and determined exclusively by binding arbitration." (Ex. A-2 at 56 ¶ 2) Neither agreement allows one party to terminate that agreement unilaterally. Because both agreements are binding on House and Lithia Dodge, they are supported by mutual consideration.

C. House's Claims Are Within the Scope of the Agreement.

When a party asserts a right to arbitration under the FAA, whether a dispute is subject to arbitration is determined under federal law. *See Prudential Secs., Inc.*, 909 S.W.2d at 900. Under federal law, whether a claim falls within the scope of an arbitration agreement depends on the factual allegations of the complaint, rather than the legal cause of action asserted. *See id.*at 900; *see also IKON Office Solutions, Inc. v. Eifert*, 2 S.W.3d 688, 697 (Tex. App.—Houston [14th Dist.] 1999, orig. proceeding); *Prudential–Bache Secs., Inc. v. Garza*, 848 S.W.2d 803, 807 (Tex. App.—Corpus Christi 1993, orig. proceeding).

The federal policy in favor of enforcing arbitration agreements is so compelling that a court should not deny arbitration "unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute in issue." *In re Valle Redondo, S.A.*, 47 S.W.3d 655, 662 (Tex. App.—Corpus Christi 2001, orig. proceeding). Thus, if the facts alleged "touch matters," have a "significant relationship" to, are "inextricably enmeshed" with, or are "factually intertwined" with the contract that is subject to the arbitration agreement, the claim is arbitrable. *In re Nestle USA--Beverage Div., Inc.*, 82 S.W.3d 767, 776 (Tex. App.—Corpus Christi 2002, orig. proceeding). And any doubts as to whether a claim falls within the scope of the agreement must be resolved in favor of arbitration. *See In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001) (orig. proceeding); *Prudential Secs., Inc.*, 909

S.W.2d at 899. The party *opposing* enforcement of arbitration agreement—here, House—has the burden to prove that a particular cause of action is not subject to arbitration. *See id.* at 900.

House's claims against Lithia Dodge clearly fall within the scope of the arbitration agreements, and House cannot demonstrate otherwise. According to House, his "employment responsibilities entailed activating/deactivating the dealership lighting." (Petition ¶ 9) He claims, among other things, that on November 20, 2013, when he attempted to turn on the dealership's lights, he was electrocuted and suffered brain injury. (Petition ¶ 9) Based on these allegations, House asserts claims against Lithia Dodge for negligence, premises liability, and gross negligence. (Petition ¶¶ 10-15) As to House's negligence and gross negligence claims, he alleges that Lithia Dodge breached the duty to provide House with a safe workplace, to ensure the premises were properly maintained, and to properly train House with respect to the electrical box. (Petition ¶¶ 10, 14) In connection with his premises liability claim, House claims that Lithia Dodge failed to warn him of a supposedly dangerous condition at the dealership and failed to make the alleged condition reasonably safe. (Petition ¶ 11)

These allegations fall wholly within the scope of both arbitration agreements. As discussed above, the arbitration agreements are sweepingly broad. In both of those agreements, House "voluntarily agree[d] that *any claim*, dispute, controversy and/or cause of action *that arises out of, or that relates in any way to [House's] . . . terms and conditions of employment . . .* shall be submitted to and determined exclusively by binding arbitration." Here, House alleges that he was injured while he was at the Lithia Dodge dealership while he was performing his "employment responsibilities." (Petition ¶ 9) He also alleges that Lithia Dodge failed to provide him with proper training to perform his job duties and also failed to provide him with a "safe workplace." (Petition ¶¶ 10, 12, 14) These allegations relate directly to House's "terms and

conditions of employment," and House cannot demonstrate that they do not. *Prudential Sec. Inc.*, 909 S.W.2d at 900 (holding that the nonmovant has the burden to show that a particular claim is not covered by an arbitration agreement). Accordingly, the Court has no discretion but to compel arbitration. *Goodwin*, 924 S.W.2d at 944; *see also In re D. Wilson Constr. Co.*, 196 S.W.3d 774, 783 (Tex. 2006) (orig. proceeding) ("Once an [arbitration] agreement is established, a court should not deny arbitration 'unless it can be said with positive assurance that an arbitration clause is *not* susceptible of an interpretation which would cover the dispute at issue.'").

D. Pending Arbitration, the Claims Against Lithia Dodge Should be Stayed.

Under 9 U.S.C. §3, this Court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. §3; *see In re FirstMerit Bank*, 52 S.W.3d at 753-54 ("Once the trial court concludes that the arbitration agreement encompasses the claims, and that the party opposing arbitration has failed to prove its defenses, the trial court has no discretion but to compel arbitration and stay its own proceedings."). The Court therefore should stay the claims against Lithia Dodge pending the arbitration of those claims.

IV. Conclusion and Prayer

For the foregoing reasons, Defendant Lithia Dodge requests that the Court compel Plaintiff to submit his claims against Lithia Dodge to arbitration and stay all claims against Lithia Dodge in this action. Lithia Dodge further requests any other relief to which it may be entitled.

Respectfully submitted,

HINKLE & VILLARREAL, P.C.

/s/ Marc E. Villarreal

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CERTIFICATE OF CONFERENCE

Prior to the filing of this Motion, I conferred with Plaintiff's counsel regarding the relief requested herein. Agreement could not be reached. Thus, this Motion is submitted to the Court for determination.

/s/ Dennis D. Gibson

Dennis D. Gibson

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 21st day of April, 2016, that a copy of the foregoing document has been sent to counsel of record as follows:

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