UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:19-cv-217-CCE-LPA

ERIK SYVERSON,

Plaintiff,

v.

RAINES FELDMAN, LLP; MILES FELDMAN; JONATHAN LITTRELL; RICHARD DECKER; ANDREW RAINES; ROBERT PARDO; and JOHN DOE 1-10,

Defendants.

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants Raines Feldman, LLP ("Raines Feldman"), Miles Feldman, Jonathan Littrell, Richard Decker, Andrew Raines, and Robert Pardo (collectively, "Defendants"), pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), Local Rules 7.2 and 7.3, and the Federal Arbitration Act, 9 U.S.C. § 3, respectfully submit this brief in support of their Motion to Dismiss based on a lack of personal jurisdiction and because the dispute alleged is subject to the exclusive remedy of arbitration.

INTRODUCTION AND STATEMENT OF FACTS

This lawsuit is the latest volley in a campaign waged by Plaintiff Erik Syverson against his former employer, Defendant Raines Feldman. Raines Feldman is a California law firm. (Doc. 5-1 (hereinafter, the "Littrell Dec.") ¶ 7–8.) It has no offices outside California and has never maintained an office or appointed an agent for service in North Carolina. (Littrell Dec. ¶ 8.) The

individual defendants are California attorneys who have never worked in North Carolina during their tenure at Raines Feldman, or at any other time. (*See* Littrell Dec. ¶ 2–6; Doc. 5-2 (hereinafter, the "Decker Dec.") ¶ 2–6; Doc. 5-3 (hereinafter, the "Pardo Dec.") ¶ 2–6; Doc. 5-4 (hereinafter, the "Raines Dec.") ¶ 2–6; Doc. 5-5 (hereinafter, the "Feldman Dec.") ¶ 2–6.)

Syverson worked for Raines Feldman from 2014 through 2017. (Littrell Dec. ¶ 11–13.) He lived in California, worked in California, and was based in Raines Feldman's main California office. (Littrell Dec. ¶ 12.) Syverson voluntarily left his job at Raines Feldman to start a competing California law firm with two other former Raines Feldman attorneys. (Littrell Dec. ¶ 13.) Syverson then moved to North Carolina.[1] (Doc. 2 ¶ 1; Littrell Dec. ¶ 13; Decker Dec. 9–10.) From his new home, Syverson threatened to file California and federal employment claims against Raines Feldman and began a campaign of public harassment against the firm and most of its partners. (Littrell Dec. ¶ 14–17; Decker Dec. ¶ 10–13.) Among other things, Syverson repeatedly posted false and defamatory statements about the firm and its partners on various social media websites. (Littrell Dec. ¶ 15–18; Decker Dec. ¶ 11–13.) Raines Feldman did not respond publicly to these repeated provocations.

In February 2018, the parties entered a Settlement Agreement to resolve Syverson's California employment claims and any other claims between the parties. (Doc. 2 Ex. A ¶ 4–5;

[1] Although Syverson's California license remains active, he is not licensed to practice law in North Carolina. Syverson's law firm, Syverson, Lesowitz and Gebelin LLP has its office in Beverley Hills and has no lawyers that are licensed to practice law in North Carolina. (*See* Doc. 2 Ex. C.)

Littrell Dec. ¶ 19.) Although Defendants vehemently deny Syverson's allegations, they agreed to pay Syverson a lump sum and series of monthly payments in exchange for mutual releases and a promise to stop harassing and disparaging Defendants. (Doc. 2 Ex. A ¶¶ 1, 4, 5, 9; Littrell Dec. ¶ 21–23.) The Settlement Agreement contains an arbitration clause requiring any future disputes to be submitted to binding arbitration in California with the Judicial Arbitration and Mediation Service ("JAMS"). Doc. 2 Ex. A ¶ 17(f).) The Settlement Agreement was also negotiated and resolved with California law in mind: it relates to conduct that allegedly occurred in California, recites certain waivers required under California law, and contains a California choice of law provision. (Doc. 2 Ex. A ¶¶ 6, 17(e).) The choice of California law further reflected the fact that the parties' relationship was centered in California: Defendants are all citizens and residents of California, Syverson was a citizen and resident of California when he worked for Raines Feldman, Defendants negotiated and executed the Settlement Agreement in California, and Defendants' performance would occur in California. (*See* Littrell Dec. ¶ 2–6, 12, 20; Decker Dec. ¶ 2–6, 15–16; Pardo Dec. ¶ 2–6, 11–12; Raines Dec. ¶ 2–6, 11–12; Feldman Dec. ¶ 2–6, 11–12.) Indeed, Syverson's work e-mail account still uses his California address and recites both cell phone and office phone numbers in the Los Angeles 310 area code. (*See* Littrell Dec. Ex. 2.)

A dispute soon arose over Syverson's alleged breaches of the Settlement Agreement. (Doc. 2 ¶ 30; Littrell Dec. ¶ 24.) Raines Feldman started an arbitration proceeding with JAMS and sent Syverson a Demand for Arbitration. (Doc. 2 ¶ 31; Littrell Dec. ¶ 25.) Syverson refused to arbitrate. (Littrell Dec. ¶ 26; *see also* Doc. 2 ¶ 31.) When JAMS proceeded with the

appointment of potential arbitrators Syverson continuously and unreasonably objected to them, occasionally making offensive comments about the arbitrators. (*See* Decker Dec. ¶ 17; *see also* Doc. 2 ¶ 31.) In July 2018, Raines Feldman filed a Petition for Order Compelling Arbitration in California state court. (Littrell Dec. ¶ 26.) That Petition remains pending.

Meanwhile, Raines Feldman continued to pay Syverson as required by the Settlement Agreement. Syverson received the final payment on February 1, 2019. (Littrell Dec. ¶ 27–28.) Two days later, Syverson told Defendants he was "terminating" the Settlement Agreement over an alleged (and unspecified) breach by Defendant Littrell. (Doc. 2 ¶ 33; Littrell Dec. ¶ 29.) Syverson also demanded $250,000 from Defendants (on top of the payments already made). (Littrell Dec. ¶ 30–31.)

When Defendants refused Syverson's demands, he renewed his online harassment of Defendants, making numerous false and inflammatory social media posts about Raines Feldman. (Litrell Dec. ¶ 31.) The topics of these posts escalated from personal attacks against Defendants to disparaging comments about the firm's clients, often tagging these clients in the posts so that they would receive the posts in their feed. (*See id.*)

On February 20, 2019, Raines Feldman filed a motion for a Temporary Restraining Order against Syverson. (Littrell Dec. ¶ 32) The motion sought to prevent Syverson from further harming Defendants while they seek to compel arbitration. The Superior Court of California, County of Los Angeles, granted the motion and enjoined Syverson from further online posts about Raines Feldman or individuals associated with the firm. (*Id.*) The California court also

ordered Syverson to delete any such posts currently in existence. (*Id.*) A hearing on Raines Feldman's motion for preliminary injunction will occur in the next few weeks. (Littrell Dec. Ex. 1.)

Defendants' attempts to protect themselves appear to have prompted Syverson to file this lawsuit. In pertinent part, the Complaint alleges that Raines Feldman (1) refused to allow Syverson to visit his old office in 2018, and (2) started arbitration to resolve its disputes with Syverson. (Doc. 2 ¶¶ 30–32, 34.) The Complaint also asserts that Defendant Littrell "violated the [Settlement] agreement," though it contains no allegations about when, where, or how he supposedly did so. (*Id.* ¶ 33.) The Complaint's remaining allegations predate the Settlement Agreement—in which Syverson released any claims he may have had—and most relate to wrongs allegedly committed on third parties. Many of these allegations are harmful to Defendants' reputations and deeply offensive. For example, the Complaint falsely accuses Defendants of various crimes, harassment, and legal malpractice. (*See, e.g.*, *id.* ¶¶ 3–6, 9–10, 12, 16–22.) The Complaint also contains gratuitous remarks about Defendants' sexual orientation, domestic affairs, and physical appearance. (*See, e.g.*, *id.* ¶ 5–6.)

ARGUMENT

I. Defendants are not subject to personal jurisdiction in North Carolina.

The Court's inquiry into personal jurisdiction generally involves a two-step analysis. *See Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 558 (4th Cir. 2014). First, the Court determines whether jurisdiction is authorized by the state's long-arm statute. *Id.* Second, the Court determines whether an assertion of jurisdiction would comport with the requirements of the

Due Process Clause. *Id.* But because North Carolina's long-arm statute permits jurisdiction to the outer limits of due process, the analysis merges into the single inquiry of whether the defendant has sufficient contacts with the forum state to satisfy constitutional limits. *Id.* at 558–59.

Under the Due Process Clause, personal jurisdiction may be either general or specific. *Id.* at 559. To assert general jurisdiction over a non-resident defendant, the party's contacts with the forum must be "so continuous and systematic as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). To establish specific jurisdiction, the defendant must have "minimum contacts" with the forum state such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Fourth Circuit has synthesized a three-part test for determining whether such minimum contacts exist. *Consulting Eng. Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009). The court should consider the extent to which (1) the defendant purposefully availed itself of conducting activities in the state, (2) the claims in the case arise out of those activities, and (3) the exercise of jurisdiction would be constitutionally reasonable. *Id.* When considering the first prong, courts have considered many factors, including: whether the defendant maintains offices or agents in the forum; whether the defendant owns property in the forum; whether the defendant reached into the forum to solicit or initiate business; whether the defendant deliberately engaged in specific long-term business activities in the forum; whether the parties contractually agreed that the law of the forum state would govern disputes; whether the defendant made in-person contact with the

resident of the forum; the nature, quality, and extent of the party's communications about the business being transacted; and whether the performance of contractual duties was to occur within the forum. *Id.*

Defendants are not subject to general or specific jurisdiction in North Carolina. Defendants are all citizens and residents of California, and service of process occurred in California. (*See* Littrell Dec. ¶ 33.) Defendants do not maintain an office or agent, own property, or regularly conduct business in North Carolina. (*See* Littrell Dec. ¶ 2–6; Decker Dec. ¶ 2–6; Pardo Dec. ¶ 2–6; Raines Dec. ¶ 2–6; Feldman Dec. ¶ 2–6.) Defendants negotiated, executed, and performed the Settlement Agreement in California, and the contract contains a California choice of law clause. (*See* Doc. 2, Ex. A. ¶ 17(e); Littrell Dec. ¶ 20; Decker Dec. ¶ 15–16; Pardo Dec. ¶ 11–12; Raines Dec. ¶ 11–12; Feldman Dec. ¶ 11–12.) Finally, Defendants' alleged breaches of contract and allegedly tortious conduct occurred in California. (*See* Doc. 2 ¶¶ 30, 34.) In fact, Syverson lived in California during most of his interactions with Defendants, and he continues to do business and interact with Defendants through his California law firm. (*See* Littrell Dec. ¶ 12; Littrell Dec. Ex. 2; Doc. 2 Ex. C.)

Bottom line, the only relevant connection between Defendants and North Carolina is the fact that Syverson moved to the State in 2017 and now lives here. But the "mere act of entering into a contract with a forum resident" is not enough to establish personal jurisdiction, "especially when all the elements of the defendants' performance" occur elsewhere. *Tejal Vyas, LLC v. Carriage Park Ltd. P'ship*, 166 N.C. App. 34, 43, 600 S.E.2d 881, 888 (2004). In other

words, there is an important distinction between "alleged contacts with a forum arising simply from a plaintiff's location and promise to perform some services there, on the one hand, and situations where a defendant has purposefully directed activities toward the state, on the other hand." *Pan-American Prods. & Holdings, LLC v. R.T.G. Furniture Corp.*, 825 F. Supp. 2d 664, 683 (M.D.N.C. 2011). This Court lacks jurisdiction over Defendants, and the case should be dismissed.

II. This action should be dismissed because Syverson's claims are subject to a valid arbitration agreement.

The Federal Arbitration Act ("FAA") reflects "a liberal policy favoring arbitration agreements." *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 507 (4th Cir. 2002). Under the FAA,

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issues involved in such suit or proceeding is referable to arbitration under such agreement, 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. Despite the statutory reference to a stay, "dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable." *Choice Hotels Int'l v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709–10 (4th Cir. 2001).[2] "This rule reflects the policy that staying the action

[2] Syverson attached the Settlement Agreement to his Complaint and alleged matters sufficient to establish every element required for dismissal under the FAA. As a result, the Court can resolve this Motion without resorting to matters outside the Complaint. For context, Defendants submitted additional materials relating to arbitration. Should the Court find any of these materials

serves no purpose when all issues raised in the complaint must be submitted to arbitration." *McLaughlin v. Inmar, Inc.*, No. 1:11-cv-983, 2012 WL 7176855, at *2 (M.D.N.C. Febr. 13, 2012).

To enforce an arbitration agreement, a party must show (1) the existence of a dispute; (2) a written arbitration agreement that purports to cover the dispute; (3) the relationship of the transaction to interstate commerce; and (4) the failure, neglect, or refusal of the respondent to arbitrate the dispute. *Adkins*, 303 F.3d at 500.

Here, the Settlement Agreement's arbitration clause provides, "Any controversy, dispute or claim between the parties shall be settled by binding arbitration." (Doc. 2 Ex. A ¶ 17(f).) The parties expressly agreed to arbitrate "any" disputes or controversies that might arise between them, including, but not limited to, "violation of non-disparagement and non-solicitation provisions," "claims for breach of contract," and "tort claims." (*Id.*) The parties also agreed that arbitration would be held in Los Angeles, California. (*Id.*) And lest there be any doubt that Syverson understood the consequences of the agreement, the arbitration clause concludes with the following acknowledgement:

> THE PARTIES UNDERSTAND THAT BY USING ARBITRATION TO RESOLVE DISPUTES THEY ARE GIVING UP ANY RIGHT THAT THEY MAY HAVE TO A JUDGE OR JURY TRIAL WITH REGARD TO ALL ISSUES CONCERNING THIS AGREEMENT.

(*Id*.)

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necessary to decide this Motion, Defendants ask the Court to treat the Motion as one for summary judgment. *See* Fed. R. Civ. P. 12(d).

The Complaint and attached Settlement Agreement establish each element required to dismiss this action under the FAA. First, there is no question that there is a dispute between the parties. Syverson's decision to file a lawsuit, coupled with his allegations that Raines Feldman instituted arbitration, confirm as much. *See Surles v. Green Tree Servicing, LLC*, No. 5:14-CV-892-F, 2015 WL 5655827, at *3 (E.D.N.C. Sept. 24, 2015).

Second, the Settlement Agreement's arbitration clause covers the disputes at issue in this case. Syverson alleges that Defendants breached the Settlement Agreement and that this breach entitles him to tort damages and a declaratory judgment freeing him from his obligations under the contract. This is squarely within the province of the Settlement Agreement's arbitration clause, which includes "any" dispute between the parties and expressly covers "tort claims" and "breach of contract." (Doc. 2 Ex. A ¶ 17(f).) Syverson admits that the parties entered the Settlement Agreement and that it is a valid contract. (Doc. 2 ¶¶ 8, 28–29, 33–34.)

Third, there is no question that the Settlement Agreement is connected to interstate commerce; the existence of the agreement is itself evidence of a relationship to commerce. *See Adkins*, 303 F.3d at 500–01; *see also Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 813–14 (4th Cir. 1989) (holding that a settlement agreement containing an arbitration clause was subject to the FAA).

Finally, there is no dispute that Syverson has refused to arbitrate any disputes with Defendants, including the specific disputes at issue in this case. The Complaint admits that

Syverson has repeatedly refused to arbitrate his disputes with Defendants and that this action arises from his displeasure with Defendants' attempts to do so. (Doc. 2 ¶ 31–34.)

Because "all of the issues presented [in this case] are arbitrable," the Court should dismiss this action. *Choice Hotels*, 252 F.3d at 709–10.

CONCLUSION

For all these reasons, Defendants respectfully ask the Court to dismiss this action.

Respectfully submitted this the 26th day of February, 2019

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

This is to certify that this brief complies with the word count provision of L.R. 7.3(d), as measured using the word count feature of Microsoft Word.

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CERTIFICATE OF SERVICE

This is to certify that on February 27, 2019, a copy of the foregoing ***Brief in Support of Defendants' Motion to Dismiss*** was served on Plaintiff by U.S. Priority Overnight Delivery, postage prepaid and addressed as follows:

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