

The reasons why Defendant Hamilton is not entitled to discovery as to the issue of arbitrability is addressed by Plaintiff Nelson in his Motion to Compel Arbitration currently pending before the Court (ECF 76), which is incorporated by reference. For all of these reasons, the Cross-Motion should be denied.¹

Hamilton also argues that a stay is not proper. His primary argument is that he believes that the Amended Complaint does not state a claim upon which relief should be granted. However, pursuant to the FAA, 9 U.S.C. §3, this Court shall stay a lawsuit pending arbitration upon a party's application. *See Devon Robotics LLC v. DeViedma*, 798 F.3d 136, 143-144 (3d Cir. 2015). This is because of "the ongoing role of the district court after sending all of the claims in a lawsuit to arbitration, including resolving disputes regarding the appointment of an arbitrator, compelling witnesses, and entering judgment on the award...If a case were dismissed rather than stayed, the parties would have to file a new action each time the Court's assistance was required..." *Id.* at 143-144 (citations omitted).

Plaintiff thus respectfully requests that the Court grant his Motion.

Respectfully submitted,

Dated: June 29, 2018

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¹ In addition, summary judgment is not proper because Hamilton has failed to provide a "Concise Statement of Material Facts" or otherwise to comply with this Court's Policies and Procedures regarding Rule 56 Motions.

CERTIFICATE OF SERVICE

I certify that on June 29, 2018 I caused a copy of the foregoing document, together with all supporting papers, to be served by ECF upon all parties and counsel.

/s Michael LiPuma, Esq.
Michael LiPuma, Esq.