UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRENT WEICKERT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Case No. 16-0142 (RJL)**
	)	
NATURAL PRODUCTS ASS'N, *et al.*,	)	
	)	
Defendants.	)	

FILED
MAR 31 2017
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

MEMORANDUM ORDER
(March 30, 2017) [Dkt. #43]

Before the Court is defendants' Motion to compel arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16, and to stay the above-captioned case pending the outcome of that arbitration. Upon due consideration of defendants' Motion and of plaintiff's opposition, the Court will **GRANT** the Motion.

The facts underlying this dispute are straightforward. Plaintiff Brent Weickert claims that his former employer, defendant Natural Products Association ("NPA"), unlawfully terminated and otherwise retaliated against him after he notified company officials of certain "illegal" and "unethical" behaviors defendant Daniel Fabricant allegedly engaged in as Chief Executive Officer of NPA. Compl. ¶ 11 [Dkt. #1-1]. Following his termination, Weickert filed suit against NPA and Fabricant in the Superior Court of San Luis Obispo County, California. Defendants removed the action to the U.S. District Court for the Central District of California, which, upon joint stipulation by the parties, transferred the case here. On March 30, 2016, defendants filed the instant Motion

seeking to enforce an arbitration clause in NPA's Personnel Handbook. That clause provides that "[a]rbitration shall be the *exclusive* remedy for resolving any" disputes that "ar[i]se out of or are related to . . . termination of employment." Decl. of Daniel Fabricant ¶ 4 ("Fabricant Decl.") [Dkt. #43-3], Ex. A, at 30 [Dkt. #43-4] (hereinafter "Handbook"). Weickert concedes, as he must, that this language encompasses his employment claims. He opposes defendants' Motion on the ground that the Handbook does not constitute a binding contract between himself and defendants.

Courts review a motion to compel arbitration under the summary judgment standard set forth in Federal Rule of Civil Procedure 56(c). *Aliron Int'l, Inc. v. Cherokee Nation Indus., Inc.*, 531 F.3d 863, 865 (D.C. Cir. 2008). "The Supreme Court has set out 'the proper framework for deciding when disputes are arbitrable.'" *Dist. No. 1, Pac. Coast Dist., Marine Engineers' Beneficial Ass'n, AFL-CIO v. Liberty Mar. Corp.*, 815 F.3d 834, 844 (D.C. Cir. 2016) (quoting *Granite Rock Co. v. Int'l Bhd. of Teamsters,* 561 U.S. 287, 296 (2010)). "Under that framework, a court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute.*" *Id.*; *see also DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 473 (2015) ("Arbitration is a matter of 'consent, not coercion.'"). "It is settled that a formation dispute is 'generally for courts to decide,'" *Liberty Mar.*, 815 F.3d at 844 (quoting *Granite Rock*, 561 U.S. at 296), and that courts will "apply ordinary state-law principles that govern the formation of contracts." *Aliron*, 531 F.3d at 865. "The court 'shall' order arbitration 'upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue.'" *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010) (quoting 9 U.S.C. § 4).

Upon review of the uncontested facts, I am satisfied that Weickert made a binding contract with defendants to arbitrate his employment claims. As noted above, NPA's Personnel Handbook states that arbitration is the exclusive remedy for employment disputes. Weickert manifested his assent to these terms not only by working at NPA, but also by playing an active role in administering and enforcing the Handbook. *See* Restatement (Second) of Contracts § 19(1) (1981) ("The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act."). As Senior Vice President and Chief Financial Officer of NPA, Weickert was responsible for the company's human resources functions. Compl. ¶ 2; Fabricant Decl. ¶ 4. In this role, Weickert circulated the Handbook to new hires and obtained their signatures on the document. Fabricant Decl. ¶¶ 4, 6. He also relied on the Handbook to resolve human resource concerns raised by NPA employees. Fabricant Decl. ¶ 5; Fabricant Decl., Ex. B [Dkt. #43-5]. Most relevant to this dispute, Weickert was personally responsible for administering the employee grievance and arbitration procedures spelled out in the Handbook, *see* Handbook at 28–30; Pl.'s Opp'n 11 [Dkt. #45], and per the allegations in his own complaint, in fact availed himself of those procedures *at the outset of this very dispute*, Compl. ¶¶ 11–16. On these facts, I have no trouble finding that Weickert manifested his intent to be bound by the terms of the arbitration clause contained in the Handbook.

Weickert nevertheless contends that no contract to arbitrate was made because defendants have been unable to produce evidence that he signed the Handbook. Laying aside whether, as defendants suggest, that lack of evidence is due to Weickert's role in

maintaining the completed signature pages for all employees of the company, Fabricant Decl. ¶ 4, I find the lack of Weickert's signature immaterial to the issue of contract formation. Although the Handbook invites acceptance via signature, it does not state that signing is the only means of acceptance, *see* Handbook at 40, and language "referring to a particular mode of acceptance" is generally "understood as suggestion rather than limitation," Restatement (Second) of Contracts § 30 cmt. b (1981). Indeed, although the parties appear to disagree as to whether the law of the District of Columbia or the law of California governs the contract formation dispute, it makes no difference because a signature is not required to manifest assent to an arbitration agreement in either jurisdiction. *See, e.g.*, *Fox v. Computer World Servs. Corp.*, 920 F. Supp. 2d 90, 104 (D.D.C. 2013) (compelling arbitration where agreement was formed under D.C. law even though plaintiff "never signed"); *Pac. Corp. Grp. Holdings, LLC v. Keck*, 181 Cal. Rptr. 3d 399, 413 (Cal. Ct. App. 2014) (enforcing employee agreement where it was "undisputed that Keck never returned a signed copy of the agreement"); *Marenco v. DirecTV LLC*, 183 Cal. Rptr. 3d 587, 594 (Cal. Ct. App. 2015) ("A signed agreement is not necessary, however, and a party's acceptance [of an agreement to arbitrate] may be implied in fact.").

Weickert also asserts a number of contract defenses which he claims bar enforcement of the Handbook against him, including its arbitration clause, but which do not challenge specifically "the making of the agreement for arbitration." 9 U.S.C. § 4. I need not decide these issues. "The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006); *see also Rent-A-*

Ctr., 561 U.S. at 70–72 (affirming district court's referral of unconscionability defense to arbitrator). Here, it is evident that the parties have agreed to arbitrate the defenses Weickert raises in his opposition brief. The arbitration clause incorporates the Judicial Arbitration and Mediation Services ("JAMS") Rules and Procedures for Employment Disputes, Handbook at 30, and JAMS Rule § 11(b) expressly provides that any "disputes over the . . . validity . . . of the agreement under which Arbitration is sought" are within the purview of the arbitrator, Defs.' Reply, Ex. 1 ("JAMS Rules") [Dkt. #46-1]. Weickert's "attacks on the validity of [the] entire contract . . . are within the arbitrator's ken." *Preston v. Ferrer*, 552 U.S. 346, 353 (2008).

Finally, Weickert relies on *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989), to argue that this Court cannot compel arbitration pursuant to the FAA because the arbitration clause incorporates, in addition to the JAMS Rules, the procedures of the California Arbitration Act, Cal. Civ. Proc. Code § 1280 *et seq*. Weickert's reliance on *Volt* is misplaced. "*Volt* dealt with a dispute about whether the parties' agreement to conduct arbitration in accordance with the *procedural* rules of the California Arbitration Act was enforceable even though the agreement fell within the scope of the FAA." *Brennan v. Opus Bank*, 796 F.3d 1125, 1129 (9th Cir. 2015). "[T]he Court held that the FAA does not 'prevent[] the enforcement of agreements to arbitrate *under different rules* than those set forth in the [FAA] itself.'" *Id.* at 1129–30 (quoting *Volt*, 489 U.S. at 479). However, the parties here do not dispute which procedural rules are applicable during arbitration. Rather, they dispute which substantive law governs *my* decision to compel arbitration. The answer to that question must be federal

substantive law, because the Handbook is a contract "evidencing a transaction involving commerce," 9 U.S.C. § 2, and "the 'federal substantive law of arbitrability [is] applicable to any arbitration agreement within the coverage of the [FAA],'" *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). "*Volt's* holding does not address [the] question [of which substantive law to apply] and does not alter [my] conclusion that federal law of arbitrability applies." *Brennan*, 796 F.3d at 1130; *see also Preston*, 552 U.S. at 360–63 (declining to apply *Volt* to question of arbitrability).

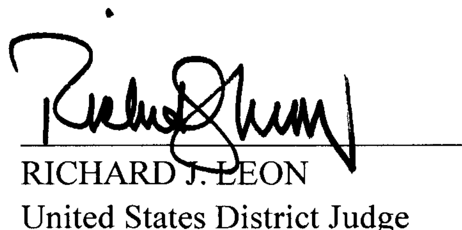
Accordingly, it is hereby

ORDERED that defendants' Motion is **GRANTED**; and it is further

ORDERED that this case is stayed pending arbitration; and it is further

ORDERED that that the parties shall submit a joint status report to the Court within 14 days of the conclusion of the arbitration or any settlement thereof.

SO ORDERED.



RICHARD J. LEON
United States District Judge