UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 18-737-DMG (RAOx)**	Date	August 9, 2018
Title	***Faraday&Future, Inc. v. Evelozcity, Inc.***	Page	1 of 5

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS - ORDER RE DEFENDANT'S MOTION TO COMPEL ARBITRATION [19] AND PLAINTIFF'S MOTION FOR RULE 16 SCHEDULING CONFERENCE [106]

On January 29, 2018, Plaintiff Faraday&Future, Inc. filed a Complaint against Defendant Evelozcity, Inc., alleging a cause of action under the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836 *et seq.* [Doc. # 1.] On February 20, 2018, Defendant filed a motion to compel arbitration and stay these proceedings during the pendency of the arbitration. [Doc. # 19.] On March 9, 2018, Plaintiff filed a First Amended Complaint ("FAC") [Doc. # 25], which is the currently operative pleading. The motion has since been fully briefed. [Doc. ## 26, 33, 45.] Having duly considered the parties' written submissions, the Court **DENIES** Defendant's motion to compel. Additionally, the Court **DENIES** as premature Plaintiff's "Motion for Rule 16 Scheduling Conference." [Doc. # 106.]

I.
FACTUAL BACKGROUND[1]

Plaintiff was founded in 2014, and has developed a line of artificial intelligence electric vehicles and related technology. *See* FAC at ¶¶ 12, 17. Plaintiff alleges that it takes great care in protecting its propriety and confidential trade secret information. *Id.* at ¶ 18. For example, Plaintiff alleges that all of its employees are required to sign robust confidentiality agreements, access to Plaintiff's offices is strictly controlled and monitored, and employees must have company-issued keycards in order to move around its facility. *Id.* In addition, Plaintiff claims that its computer systems are password and firewall protected. *Id.*

Defendant is an artificial intelligence electric vehicle startup company that was founded by former employees of Plaintiff. *See id.* at ¶¶ 13, 23. Plaintiff alleges that Defendant's stratagem is to hire former employees of Plaintiff, and have them copy and take Plaintiff's

[1] This factual summary is derived from the allegations in Plaintiff's FAC and is set forth for background purposes only.

proprietary information. *See id.* at ¶ 29. For instance, Plaintiff asserts that former employee Christoph Kuttner surreptitiously copied engineering files for vehicles in Plaintiff's anticipated product line. *See id.* at ¶ 27. Plaintiff also avers that Defendant has used and continues to use Plaintiff's trade secrets and/or has disclosed and continues to disclose Defendant's trade secrets. *See id.* at ¶ 30.

In the instant motion, Defendant contends that Plaintiff should be compelled to arbitrate its DTSA claim pursuant to certain arbitration clauses to which Plaintiff and its former employees are parties. *See* Mot. at 6.[2]

II.
LEGAL STANDARD

The Federal Arbitration Act ("FAA") provides that written arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011) (quoting 9 U.S.C. § 2). "The basic role for courts under the FAA is to determine '(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.'" *Kilgore v. KeyBank Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (*en banc*) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)).

"Generally, the contractual right to compel arbitration 'may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration.'" *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th Cir. 2013) (quoting *Britton v. Co-op Banking Grp.*, 4 F.3d 742, 744 (9th Cir. 1993)). Nonetheless, "[a] litigant who is not a party to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract law allows the litigant to enforce the agreement." *Id.* at 1128 (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 632 (2009)). The parties agree that California law governs by virtue of the choice-of-law clauses in Plaintiff's arbitration agreements with its former employees. *See* Mot. at 13–14; Opp'n at 9 n.5; *see, e.g.*, Boock Decl., Ex. 5 at 8–9 (arbitration clause in Kuttner's employment agreement) [Doc. # 19-6].

[2] All page references herein are to page numbers inserted by the CM/ECF system.

III.
DISCUSSION

Defendant argues that the equitable estoppel doctrine and agency law require Plaintiff to arbitrate its DTSA claim, even though Defendant is not a signatory to the underlying employment agreements between Plaintiff and its former employees. *See* Reply at 5.

A nonsignatory can enforce an arbitration clause via the doctrine of equitable estoppel in one of two circumstances:

> (1) [W]hen a signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory or the claims are intimately founded in and intertwined with the underlying contract, and (2) when the signatory alleges substantially interdependent and concerted misconduct by the nonsignatory and another signatory and the allegations of interdependent misconduct are founded in or intimately connected with the obligations of the underlying agreement.

Murphy v. DirecTV, Inc., 724 F.3d 1218, 1229 (9th Cir. 2013) (quoting *Kramer*, 705 F.3d at 1128–29). In either circumstance, "reliance on the contract bearing the arbitration clause is fundamental to compulsion by a non-party to arbitrate." *See Waymo LLC v. Uber Techs., Inc.*, 870 F.3d 1342, 1346 (Fed. Cir. 2017) (applying California law); *see also id.* ("[T]he California Court of Appeal [has] explained that reliance on a contract containing an arbitration requirement is *the key element* in the equitable estoppel inquiry." (emphasis added)).

Plaintiff represents that it "can and will prove all of the elements of trade secret misappropriation without relying on any obligations in any" of its agreements with former employees. *See* Opp'n at 14. Instead, Plaintiff intends to show that its employees breached their common law duty of loyalty by stealing its trade secrets, and that they thereafter terminated their employment and provided this information to Defendant. *See id.* at 14 & n.8; FAC at ¶ 23; *see also Huong Que, Inc. v. Luu*, 150 Cal. App. 4th 400, 414, 416 (2007) ("[A]n employee, while employed, owes an undivided duty of loyalty to his employer. * * * The duty of loyalty embraces several subsidiary obligations, including the duty 'to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors' . . . and the duty 'not to use or communicate confidential information of the principal for the agent's own purposes or those of a third party.'" (quoting Restatement (Third) of Agency §§ 8.04, 8.05(2) (2006))).

Further, although Plaintiff alleges that all of its "employees are required to sign robust confidentiality agreements as conditions of their employment[,]" *see* FAC at ¶ 18, "references to employment agreements [that] are presented to show that [an employer] has taken reasonable

measures to safeguard its trade secrets" do not constitute the form of "reliance" that triggers equitable estoppel. *See Waymo*, 870 F.3d at 1347 ("[T]his is not how California courts have viewed reliance in the context of compelling arbitration by non-parties to an arbitration agreement."); *see also Goldman v. KPMG LLP*, 173 Cal. App. 4th 209, 233 (2009) (observing that the doctrine applies if "it would be inequitable for [the signatories] . . . to use the substantive terms of [the] agreements as a foundation for their claims against [the nonsignatories] . . . and at the same time to disavow the arbitration clauses in those very agreements"). As such, Plaintiff does not "rely on or use the terms or obligations" of the employment agreements "as a foundation for [its] claims." *See Waymo*, 870 F.3d at 1347 (alteration in original) (quoting *Goldman*, 173 Cal. App. 4th at 233) (internal quotation marks omitted). Similarly, Plaintiff's invocation of its former employees' common law duty of loyalty demonstrates that "the allegations of collusion [between Defendant and the former employees] are not inextricably bound up with the obligations imposed by the agreement[s] containing the arbitration clause." *See id.* at 1348 (quoting *Kramer*, 724 F.3d at 1133) (internal quotation marks omitted). Therefore, regardless of whether Plaintiff intends to separately arbitrate claims against the former employees for breach of contract, Plaintiff is not equitably estopped from pursuing its DTSA claim against Defendant in this Court. *See Waymo*, 870 F.3d at 1348 (crediting the plaintiff's representation that its claims would not rely on an employment agreement).[3]

Agency theory also does not require Plaintiff to submit its DTSA claim to arbitration. That doctrine applies only "when a plaintiff alleges a defendant acted as an agent of a party to an arbitration agreement . . . ." *Garcia v. Pexco, LLC*, 11 Cal. App. 5th 782, 788 (2017) (alteration in original) (quoting *Thomas v. Westlake*, 204 Cal. App. 4th 605, 613 (2012)). At no point does Plaintiff allege that Defendant was acting as agent of Plaintiff's former employees. Rather, Defendant concedes that the former employees were—at most—purportedly acting on behalf of Defendant. *See* Reply at 18. Thus, as a nonsignatory to the employment agreements, Defendant may not compel arbitration.

IV.
CONCLUSION

In light of the foregoing, the Court **DENIES** Defendant's motion to compel arbitration. Defendant shall file a response to the FAC within **15 days** of this Order. The Court further **DENIES** as premature Plaintiff's "Motion for Rule 16 Scheduling Conference" because Defendant has not yet answered the FAC. It is this Court's practice to schedule a Rule 16

[3] Defendant insists that *CardioNet LLC v. InfoBionic, Inc.*, No. CV15-11803-IT, 2017 WL 1115153 (D. Mass. 2017), compels the contrary result. *See* Reply at 12–15. Assuming *arguendo* that *CardioNet*'s reasoning on this point is persuasive, the decision is inapposite because the plaintiff therein did not explicitly disavow reliance on the underlying employment agreement. *See CardioNet*, 2017 WL 1115153, at *3; *see also Waymo*, 870 F.3d at 1349 (distinguishing *CardioNet* on this basis).

Scheduling Conference once the pleadings are settled and the case is at issue. The August 10, 2018 hearing on Plaintiff's motion is **VACATED**.

IT IS SO ORDERED.