

No. [REDACTED]

[REDACTED]  
dba [REDACTED]

v.

[REDACTED] and  
[REDACTED] L.L.C.

§ In the District Court  
§  
§  
§ [REDACTED] Judicial District  
§  
§  
§ Tarrant County, Texas

**Defendants' Motion to Compel Arbitration**

The parties are signatories to an arbitration agreement. The agreement, save for a few exceptions, covers all statutory, contractual, and common law claims that relate to [REDACTED]'s employment or termination from [REDACTED]. The defendants move to compel arbitration and the court has no discretion but to order it.

Respectfully submitted,

[REDACTED]

T: [REDACTED]  
F: [REDACTED]  
E: [REDACTED]

\_\_\_\_\_  
[REDACTED]  
SBN [REDACTED]

**Attorneys for Defendants**

**Memorandum in Support of  
Defendants' Motion to Compel**

*Factual Background*

██████████ began working as a leasing agent with ██████████ on December 11, 2008.<sup>1</sup> He was required to sign an arbitration agreement as a condition of his employment.<sup>2</sup> The agreement explained that “[b]y agreeing to arbitrate, the ██████████ and its Employees give up their right to sue in court, as well as the right to trial by jury.”<sup>3</sup> The parties agreed that *any* legal claim that either might have against the other would be submitted to a private arbitrator for a final, binding decision, with a limited right of appeal to a court of law.<sup>4</sup>

The agreement is thorough and, save for a few excepted claims,<sup>5</sup> all-encompassing. It covers all statutory, contractual, and common law claims or controversies, past, present, or future that relate, in any way, to ██████████'s employment with ██████████, his hiring, or his termination.<sup>6</sup> It expressly includes claims for breach of contract and tort claims (including negligent or intentional injury and tortious interference with contract).<sup>7</sup>

While it declares that the arbitration will proceed under American Arbitration

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<sup>1</sup> Exhibit 2 – Plaintiff's Original Petition, Motion for Temporary Restraining Order, and for Temporary and Permanent Injunction.

<sup>2</sup> Exhibit 1 – Mutual Agreement to Arbitrate Claims.

<sup>3</sup> Agreement at § 1.

<sup>4</sup> *Id.* (“The ██████████ and the Employee understand and agree that this Agreement waives their right to a jury trial and waives the right to seek remedies in court with respect to the claims covered by this Agreement.”).

<sup>5</sup> *See* Agreement at § 2(3). The excepted claims involve claims for worker's compensation benefits, unemployment compensation, claims for benefits under ██████████'s welfare benefit plan, and personal injuries sustained on the job. The parties haven't asserted any of those types of claims.

<sup>6</sup> Agreement at § 2.

<sup>7</sup> ██████████ has asserted breach of contract, negligence, and tortious interference with contract in this suit. ██████████ has counted with his own breach of contract and tortious interference actions.

Association rules,<sup>8</sup> it lays out specific rules for depositions and other pre-hearing discovery,<sup>9</sup> witnesses and exhibits,<sup>10</sup> pre-hearing procedures,<sup>11</sup> and even dispositive motions.<sup>12</sup> It states it is governed by the Federal Arbitration Act<sup>13</sup> and that arbitration is the exclusive forum for all disputes.<sup>14</sup> Indeed, the only court action the agreement contemplates is a motion to compel arbitration and subsequent dismissal of any suit filed.<sup>15</sup> Finally, it holds that any disputes regarding its scope, enforceability, and terms must also be arbitrated.<sup>16</sup>

To initiate arbitration, all an employee is required to do is send written notice of the nature of his claim and the supporting facts to ██████<sup>17</sup> along with a check for \$150.00.<sup>18</sup> ██████ upon receipt, is obliged to notify the American Arbitration Association for an arbitration proceeding.<sup>19</sup> Arbitration can also be initiated by the association's receipt of a court order compelling arbitration.<sup>20</sup>

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<sup>8</sup> *Id.* at § 6.

<sup>9</sup> *Id.* at § 13.

<sup>10</sup> *Id.* at § 14.

<sup>11</sup> *Id.* at § 15.

<sup>12</sup> *Id.* at § 16.

<sup>13</sup> *Id.* at § 22.

<sup>14</sup> *Id.* at § 21.

<sup>15</sup> *Id.* at § 26.

<sup>16</sup> *Id.* at § 2.

<sup>17</sup> *Id.* at § 7.

<sup>18</sup> *Id.* at § 9.

<sup>19</sup> *Id.* at § 7.

<sup>20</sup> *Id.* at § 7.

██████████ by accepting employment at ██████████, was deemed to accept all the terms of the agreement.<sup>21</sup> He signed it, indicating that he understood that he was giving up any right to a jury trial and ██████████ signed it, too.<sup>22</sup>

██████████ resigned from ██████████ on February 1, 2010, and began working for ██████████ ██████████ L.L.C. (██████████).

### *Procedural History*

██████████ filed this action on August ██████████ 2010.<sup>23</sup> It has alleged that ██████████ signed a confidentiality agreement in conjunction with his employment.<sup>24</sup> That agreement, ██████████ says, governed ██████████'s access to and use of its confidential and proprietary information.<sup>25</sup> It has alleged that ██████████ after resigning from ██████████ in February 2010, has wrongfully used its proprietary information to compete with it and solicit its customers.<sup>26</sup> In response to these purported misfeasances, ██████████ claims that it sent a cease-and-desist letter referencing the confidentiality agreement, but the letter, it says, didn't have its intended effect.<sup>27</sup>

It has asserted various causes of action, including breach of contract, breach of fiduciary duty, misappropriation of trade secrets, negligence, fraud, and tortious interference with contracts.<sup>28</sup> It acknowledged the existence of the arbitration

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<sup>21</sup> *Id.* at § 1.

<sup>22</sup> *Id.* at at 8.

<sup>23</sup> Exhibit 2 – Plaintiff's Original Petition, Motion for Temporary Restraining Order, and for Temporary and Permanent Injunction.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 4-6.

<sup>27</sup> *Id.* at 6-7.

<sup>28</sup> *Id.* at 8-11.

agreement, and even conceded its applicability, but claimed that it had to file suit “due to the emergency nature of the temporary restraining order that it was seeking.”<sup>29</sup> Though it initially obtained a TRO, the TRO dissolved because it didn’t post a bond or set a hearing for temporary injunction.

█████ answered the suit with a general denial, asserted affirmative defenses, and countered with some claims of his own.<sup>30</sup> When he filed his answer, he didn’t have a copy of the arbitration agreement, but propounded requests for disclosures to get one.<sup>31</sup>

█████ responded to his disclosure request, but didn’t produce a copy of the agreement.<sup>32</sup> He transmitted a letter to █████’s counsel advising him of the deficiency.<sup>33</sup> In his letter, he expressly reserved his right to arbitrate.<sup>34</sup>

█████ belatedly produced a copy of the arbitration agreement on November 1, 2010, and █████ attempted to initiate arbitration the same day.<sup>35</sup> █████ responded, saying that he had already irrevocably waived his right to arbitrate because he didn’t demand arbitration within time.<sup>36</sup>

█████ has misread the agreement.

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<sup>29</sup> *Id.* at 2.

<sup>30</sup> Exhibit 3 – Defendants’ Original Answer.

<sup>31</sup> See Exhibit 4 – █████ Letter of October █████ 2010.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> Exhibit 5 – █████ Letter of November █████ 2010.

<sup>36</sup> Exhibit 6 – █████ Letter of November █████ 2010.

### *Applicability of the FAA*

Under the Federal Arbitration Act (FAA), written agreements to settle controversies by arbitration are valid and irrevocable.<sup>37</sup> The FAA applies to all actions in state court when the dispute concerns a contract evidencing a transaction involving commerce.<sup>38</sup>

*Commerce* here isn't limited to the shipment of goods across state lines, but includes all contracts relating to interstate commerce.<sup>39</sup> For jurisdiction, the FAA doesn't require a substantial effect on interstate commerce; it requires only that commerce be involved or affected.<sup>40</sup> Interstate commerce may be shown a variety of ways, including the manufacture of parts in a different state and the transportation of materials across state lines.<sup>41</sup>

██████ is engaged in the business of motor vehicle leasing, loan facilitation, and ancillary activities.<sup>42</sup> The company provides its services to clients and customers throughout the state of Texas.<sup>43</sup> The cars it leases are manufactured in different states and transported to Texas so they involve the manufacture and transportation of materials across state lines. ██████ was an agent who leased these cars for ██████<sup>44</sup> Since the arbitration agreement involves, affects, or relates to commerce, the FAA applies.

It'd apply even if there wasn't a connection to interstate commerce. In section 22, the parties agreed that the agreement would be governed by the FAA and, if the FAA didn't

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<sup>37</sup> 9 U.S.C. § 2.

<sup>38</sup> *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 269-70 (Tex. 1992) (orig. proceeding).

<sup>39</sup> *In re FirstMerit Bank*, 52 S.W.3d 749, 754 (Tex. 2001) (orig. proceeding).

<sup>40</sup> *See In re L&L Kempwood Associates*, 9 S.W.3d 125, 127 (Tex. 1999) (orig. proceeding).

<sup>41</sup> *See Jack B. Anglin*, 842 S.W.2d at 270.

<sup>42</sup> Plaintiff's Original Petition at 3-4.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4.

apply, it'd be governed by the Texas Act.<sup>45</sup> Under Texas law, when an arbitration agreement references both the Texas Act and the FAA, as this one does, the FAA is deemed controlling.<sup>46</sup> And that's true even when the agreement says that Texas law applies.<sup>47</sup>

### *The Parties' Claims Are Within the Scope of the Agreement*

A party seeking to compel arbitration needs only to show that a valid arbitration agreement exists and that the disputes fall within its scope for arbitration to be compelled.<sup>48</sup> Any doubts about the scope of the arbitrable issues are to favor arbitration.<sup>49</sup> Beyond this analysis, the courts generally don't delve further into the substance of the parties' disputes.<sup>50</sup>

██████ and ██████ agreed that they would resolve by arbitration all statutory, contractual, and common law claims or controversies, past, present or future, that arise out of or relate to the Employee's hiring, employment, or termination of employment by the ██████ including:

- claims for breach of any contract or covenant (express or implied);
- tort claims (including, but not limited to, negligent or intentional injury, invasion of privacy, defamation, and tortious interference with contract);
- claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance;

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<sup>45</sup> Agreement at § 22 (arbitration statute of the state in which the Employee is employed).

<sup>46</sup> *EZ Pawn v. Mancias*, 934 S.W.2d 87, 91 (Tex. 1996).

<sup>47</sup> *Id.*

<sup>48</sup> *Will-Drill Res, Inc. v. Samson Res. Co.*, 352 F.3d 211, 214 (5<sup>th</sup> Cir. 2003); *see also In re D. Wilson Construction Co.*, 196 S.W.3d 774, 781 (Tex. 2006).

<sup>49</sup> *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

<sup>50</sup> *Will-Drill*, 352 at 214.

- claims or disputes regarding this Agreement, including but not limited to, its enforceability, scope or terms; and
- disputes regarding arbitrability under this Agreement.<sup>51</sup>

█████'s petition states that █████ was an employee of █████ and that he signed a confidentiality agreement in conjunction with that employment.<sup>52</sup> █████'s causes of action rest on that agreement and █████'s alleged breach of it. █████'s counterclaims stem from █████'s repudiation of his employment contract. Thus, the parties' claims fall squarely within the agreement's scope—they all arise out of and relate to █████'s employment of █████—so the court has no discretion but to compel arbitration.<sup>53</sup>

And that'd be true even if █████ were to argue that its claims fall outside the scope of the agreement. The parties agreed that any disputes, even those concerning arbitrability, were to be arbitrated.<sup>54</sup>

### *Time Limits for Arbitration*

The agreement requires █████ or █████ to initiate arbitration within the limitations period applicable to their respective claim(s). It says:

Arbitration must be initiated within 180 days of the date the Employee became aware of the alleged harm or should have become aware of the alleged harm, unless a longer time period for commencing action is provided under federal or state statute. Failure to initiate arbitration within these time limits shall be deemed an irrevocable waiver of the claim.<sup>55</sup>

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<sup>51</sup> Agreement at § 2.

<sup>52</sup> See *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 752 (Tex. 2001) (the focus is on the complaint's factual allegations, not the causes of action asserted).

<sup>53</sup> Even if █████ wanted to argue the agreement's scope, the court would still be bound to compel arbitration because the parties agreed to arbitrate disputes about the agreement's scope and its terms. See Agreement at § 2.

<sup>54</sup> Agreement at § 2.

<sup>55</sup> *Id.* at § 5.

Considering that the agreement arises out of the employment context,<sup>56</sup> the language tracks the Texas Labor Code for initiating discrimination claims. Under Texas Labor Code § 21.202(a), an employee must file a discrimination claim within 180 days from when he first learned (or should have learned) of a discriminatory employee decision. If he fails to file a charge within that time, then his claim is barred by limitations.<sup>57</sup> The agreement tracks this limitations period for those types of claims: the employee must initiate arbitration—not file a charge, but send notice of arbitration along with \$150.00 to █████—within 180 days of becoming aware of his claim or it will be deemed irrevocably waived.<sup>58</sup>

As set out above, the agreement doesn't apply just to employment discrimination claims, but to any statutory, contractual, or common law claims that might arise between the parties.<sup>59</sup> This paragraph tracks the limitations periods for those non-employment claims as well. It says that arbitration must be initiated within 180 days *unless a longer time period for commencing actions is provided under federal or state statute*.<sup>60</sup> Thus, a party with a negligence claim must initiate arbitration within two years of the breach of duty or its claim will be deemed waived.<sup>61</sup> For breach of contract actions, arbitration must be

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<sup>56</sup> Agreement at § 1 (“By accepting or continuing employment with the Dealership, all Employees are deemed to agree to the terms of this Agreement.”)

<sup>57</sup> *Cooper-Day v. RME Petroleum Co.*, 121 S.W.3d 78 (Tex. App. – Fort Worth 2003, pet. denied); *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490 (Tex. 1996).

<sup>58</sup> Agreement at § 5.

<sup>59</sup> *Id.* at § 2.

<sup>60</sup> The paragraph also speaks of these *time limits*, plural, meaning that there is more than one time limit.

<sup>61</sup> The statute of limitations for negligence is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a); *KPMG Peat Marwick v. Harrison Cty. Hous. Fin. Corp.*, 988 S.W.2d 746, 750 (Tex. 1999).

initiated within four years.<sup>62</sup> A party who files suit within limitations, but fails to initiate arbitration within the limitations period arguably waives his claim.

This construction is consistent with the agreement's alternate method of initiating arbitration in section seven.<sup>63</sup> Under that section, for purposes of the statute of limitations, an arbitration is deemed initiated not when a lawsuit is filed, but only when an order compelling arbitration is issued by the court, or as otherwise ordered by the court.<sup>64</sup> A party could, therefore, arbitrate his claims as long as a court issued an order compelling arbitration within the applicable limitations period. If the court issued the order after the limitations period had run, that party arguably has waived his claim (even though he had filed suit within limitations).

In his counterclaims, ██████ has alleged that ██████ repudiated its employment agreement with him. He states that this occurred in September 2009. He has countersued for fraud, tortious interference with contract, breach of contract, and unfair competition, all of which have two-year statutes of limitation or longer. Since he formally requested arbitration and sent his share of the arbitration fee to ██████ on November 1, 2010, his request for arbitration was timely.

██████, however, sent his check back, saying that he had failed to demand arbitration within the time limits.<sup>65</sup> It argued that because he hadn't requested arbitration within 180 days of becoming aware of the claims subject to arbitration, he waived arbitration altogether.<sup>66</sup>

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<sup>62</sup> Tex. Civ. Prac. & Rem. Code § 16.051; *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002).

<sup>63</sup> See Agreement at § 7.

<sup>64</sup> Agreement at § 7.

<sup>65</sup> Plaintiff's Original Petition.

<sup>66</sup> *Id.* ("Defendants failed to timely demand arbitration within the time limits established under Section 5 of the 2008 Arbitration Agreement; thus, they have irrevocably waived their right to demand arbitration of these claims.")

█'s construction of the time limits paragraph is without merit for a couple reasons. First, the paragraph doesn't say that if a party fails to initiate arbitration within 180 days, it waives arbitration. Waiver involves claims: "Failure to initiate arbitration within these time limits shall be deemed an irrevocable waiver of the *claim*." (emphasis added) In Texas, parties can agree to different limitations periods.<sup>67</sup> Here, the parties agreed to maintain the ordinary limitations periods for different actions, but agreed that the initiation of arbitration rather than the filing of a lawsuit would stall limitations.<sup>68</sup> Reading the provision any differently would not only cut against the common usage of *claim* (which means *private action*),<sup>69</sup> it would violate the Texas Civil Practice & Remedies Code which allows parties to negotiate limitations periods, but sets a two-year minimum.<sup>70</sup>

Second, its construction is inconsistent with the agreement's alternate method of initiating arbitration.<sup>71</sup> The agreement states that, *for the purposes of the statute of limitations*, arbitration is deemed initiated when a court compels arbitration.<sup>72</sup> If a court could only order arbitration within 180 days of a party's knowledge of harm, then limitations periods for all actions would be cut down to six months or less, in violation of

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<sup>67</sup> Tex. Civ. Prac. & Rem. Code § 16.070 – "a person may not enter a stipulation, contract, or agreement that purports to limit the time in which to bring suit on the stipulation, contract, or agreement to a period shorter than two years. A stipulation, contract, or agreement that establishes period that is shorter than two years is void in this state."

<sup>68</sup> Compare Agreement at § 7.

<sup>69</sup> Claim: "a mode of proceeding in court to enforce a private right, to redress or prevent a private wrong, or to punish a public offense. As the latter part of that definition suggests, it is possible to speak of criminal actions. Originally, action referred exclusively to proceedings in a court of law; suit referred to proceedings in chancery (or equity), as well as to prosecutions at law. When the jurisdictional distinction existed, an action ended at judgment, but a suit in equity ended after judgment and execution. Today, since virtually all jurisdictions have merged the administration of law and equity, the terms action and suit are interchangeable." Bryan A. Garner, *A Dictionary of Modern Legal Usage*, 2d ed. 20.

<sup>70</sup> Tex. Civ. Prac. & Rem. Code § 16.070 – "Parties can agree to a different limitations period, but must be at least two years."

<sup>71</sup> See Agreement at § 7.

<sup>72</sup> *Id.*

the Texas Civil Practice & Remedies Code. If parties had meant for the time limit to be an absolute limit of 180 days, this provision wouldn't have included the statute of limitations language for initiating arbitration or the pluralistic language of *these time limits*.

But whether ██████ is right and ██████ is wrong on this issue isn't a question for the court to decide. In section 2, the parties agreed that any disputes regarding the terms of the agreement would be subject to arbitration.<sup>73</sup> Thus, the meaning and application of *claim, these time limits*, or any other terms aren't subject to the court's adjudication, but the arbitrator's.

### ***Procedural Arbitrability***

Even if the parties hadn't expressly reserved disputes over the agreement's terms for arbitration, the arbitrator would still be the adjudicator of those issues.<sup>74</sup>

Under the FAA, it is presumed that parties that enter into arbitration agreements implicitly authorize the arbitrator to adopt such procedures as are necessary to give effect to the parties' agreement.<sup>75</sup> Thus, procedural questions which grow out of the dispute and bear on its final disposition are presumptively not for the judge, but for the arbitrator to decide.<sup>76</sup> And questions of timeliness are ones of procedural, not substantive, arbitrability.<sup>77</sup> They are, therefore, questions for the arbitrator to decide.<sup>78</sup>

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<sup>73</sup> Agreement at § 2.

<sup>74</sup> See *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002).

<sup>75</sup> *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758, 1775 (2010).

<sup>76</sup> *Howsam*, 537 U.S. at 84.

<sup>77</sup> *General Warehouseman and Helpers Union Local 767 v. Albertson's Distribution, Inc.*, 331 F.3d 485, 488 (5<sup>th</sup> Cir. 2003), citing *Oil, Chemical, and Atomic Workers' International Union, Local 4-447 v. Chevron Chemical Co.*, 815 F.2d 338, 341 (5<sup>th</sup> Cir. 1987).

<sup>78</sup> See *Howsam*, 537 U.S. at 85 (whether prerequisites such as time limits have been met are for the arbitrator to decide).

The Houston Court Appeals dealt with this issue in case of *In re Global Construction*.<sup>79</sup> In that case, the parties agreed to submit any construction disputes to an architect and the architect would issue a letter notifying them of his decision on the dispute.<sup>80</sup> The parties agreed that any demand for arbitration had to be made within thirty days of receiving the architect's letter or his decision would become final and binding.<sup>81</sup>

Global Construction submitted a final application to C. Springs requesting \$225,344.16 for extra work that it performed in constructing an apartment complex.<sup>82</sup> At first, C. Springs refused to pay the amount, claiming that Global wasn't entitled to the payment under the contract.<sup>83</sup> The parties later agreed to a settlement of \$90,000, but C. Springs asked that Global perform some additional warranty work.<sup>84</sup> Global balked, contending that the requested work was outside the scope of the original contract. C. Spring then submitted the whole dispute to the architect.<sup>85</sup> The architect issued a decision where he found that Global didn't have any valid claims against C. Springs for additional costs under the contract.<sup>86</sup> He notified the parties that his decision would be final and binding if neither party sought arbitration within 30 days of his decision.<sup>87</sup>

Twenty days after his decision, C. Springs filed suit for declaratory judgment, requesting a refund of the \$90,000 that it had previously paid Global for the extra

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<sup>79</sup> *In re Global Construction Co.*, 166 S.W.3d 795 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2005).

<sup>80</sup> *Id.* at 796.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 797.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

work.<sup>88</sup> Global filed a motion to compel arbitration, but two months later.<sup>89</sup> The trial court denied Global's motion, expressing finding that it had waived its right to arbitrate because it didn't demand arbitration within 30 days of the architect's letter.<sup>90</sup> Global appealed, contending that the arbitrator was the proper adjudicator of whether it waived arbitration, not the court.<sup>91</sup> C. Springs responded, arguing that the court was the correct adjudicator because the waiver involved a condition precedent to arbitration.<sup>92</sup>

The court of appeals reversed, holding that the arbitrator, not the court, was the appropriate adjudicator of the timeliness dispute.<sup>93</sup> The court held that under *Howsam*,<sup>94</sup> once the trial court determined that the parties agreed to arbitrate and the parties' claims fell within the scope of the arbitration agreement, the court had no discretion, but to compel arbitration, leaving the parties to present the matter of the delay in requesting arbitration to the arbitrator.<sup>95</sup> The court iterated that any contractual time limit on a request for arbitration is a matter for the arbitrator, not the court.<sup>96</sup>

Likewise, any claim that ██████'s request for arbitration was untimely is a question for the arbitrator, not for this court. Thus, the court has no discretion but to order the parties to arbitration.

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 798.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79 (2002).

<sup>95</sup> *In re Global*, 166 S.W.3d. at 799.

<sup>96</sup> *Id.* Payment of fees is also a procedural condition that the trial court shouldn't review. *Dealer Computer Services, Inc. v. Old Colony Motors, Inc.*, 588 F.3d 884, 887 (5<sup>th</sup> Cir. 2009) (trial court erred when it ordered a party to pay arbitration fees).

*Attorneys' Fees*

The parties agreed that if either of them filed a lawsuit that involved a matter subject to arbitration, the other party could give notice of the agreement and if the lawsuit wasn't dismissed within 10 days, then the filing party would be liable for any and all costs and attorneys' fees incurred in dismissing the suit.<sup>97</sup>

█████ filed this suit, alleging various causes of action relating to issues arising out of █████'s employment with █████. It even acknowledged the existence of the agreement in its petition. █████ gave notice of the existence of the arbitration agreement on November 1, 2010, and █████ refused to proceed to arbitration. █████ therefore, requests all costs and fees incurred in the filing of this motion and any other costs attendant to compelling arbitration.

*Prayer*

The defendants pray that the court order the parties to arbitration, award the defendants their costs and attorneys' fees in procuring this order, dismiss the action, and for such other relief as the court deems proper, whether at law or in equity.

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<sup>97</sup> Agreement at § 26.

Dated: \_\_\_\_\_

Respectfully submitted,

[Redacted signature]

T: [Redacted]  
F: [Redacted]  
E: [Redacted]

\_\_\_\_\_  
SBN [Redacted]

**Attorneys for the Defendants**

**Certificate of Service**

I hereby certify that on \_\_\_\_\_ I delivered a copy of this motion to opposing counsel according to the Texas Rules of Civil Procedure, to-wit:

[Redacted list of names]

\_\_\_\_\_  
[Redacted]

## Exhibit List

1. [REDACTED] – Mutual Agreement to Arbitrate Claims
2. Plaintiff's Original Petition
3. Defendants' Original Answer
4. [REDACTED] Letter of October [REDACTED] 2010
5. [REDACTED] Letter of November [REDACTED] 2010
6. [REDACTED] Letter of November [REDACTED] 2010