IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN HARRISON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 24-1206-RGA
	)	
ARCTIC GLACIER U.S.A., INC.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Presently before the court in this civil action for breach of contract is the motion of defendant Arctic Glacier U.S.A., Inc. ("Defendant") to dismiss the first amended complaint ("FAC") for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 9)[1] For the following reasons, I recommend that the court DENY Defendant's motion to dismiss.

I. BACKGROUND

Plaintiff John Harrison ("Plaintiff") worked as Defendant's Region President and Chief Operating Officer from July of 2019 through April 30, 2024. (D.I. 6 at ¶ 4) On March 16, 2020, the parties entered into an employment agreement (the "Agreement") which gave Defendant the option to terminate Plaintiff "other than for Cause," thereby triggering Defendant's obligation to pay Plaintiff severance benefits in the amount of twelve months' salary and cash bonuses. (*Id.* at ¶¶ 5, 7; Ex. A at ¶ 5(d)) The Agreement also afforded Plaintiff the option to resign his

[1] The briefing associated with the pending motion to dismiss is found at D.I. 10, D.I. 11, and D.I. 12.

employment for "Good Reason,"[2] which would also trigger Defendant's obligation to pay Plaintiff severance benefits. (*Id.* at ¶ 9; Ex. A at ¶ 5(e))

In January of 2024, Defendant's CEO communicated to Plaintiff that he intended to reduce certain of Plaintiff's duties and responsibilities. (*Id.* at ¶ 10) Two months later, the CEO advised Plaintiff that a new chief operating officer would be hired to take over some of Plaintiff's responsibilities. (*Id.* at ¶ 11) On April 4, 2024, Plaintiff discussed these developments with Defendant's CEO and submitted a follow-up email the same day recapping that conversation and expressing his desire to "mutually work together on [his] exit." (*Id.* at ¶¶ 12-13; Ex. B) The FAC alleges that the April 4, 2024 communication was not a resignation letter because the parties had not come to a mutual agreement about the terms of Plaintiff's departure at that time, and the email did not comply with the notice provisions contained in the Agreement. (*Id.* at ¶¶ 14-16)

During a follow up conversation between the parties on April 16, 2024, Defendant took the position that grounds for Plaintiff to resign with Good Reason did not exist. Plaintiff disagreed and maintained that he had not yet provided notice of his resignation. (*Id.* at ¶ 17) On April 19, 2024, Defendant informed Plaintiff that it accepted Plaintiff's resignation and that Plaintiff's last day would be April 30, 2024. (*Id.* at ¶ 19) Defendant offered Plaintiff a severance package that provided reduced benefits and more restrictive covenants than the severance benefits described in the Agreement. (*Id.*) Plaintiff did not resign and did not agree to the severance package proposed by Defendant. (*Id.* at ¶¶ 20-21)

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[2] The FAC defines "Good Reason" to include: "(i) a material reduction in the Executive's Base Salary; (ii) a material diminution in the Executive's responsibilities or duties as Regional President of the Company . . . ; (iii) the assignment of duties to the Executive materially inconsistent with his position as Regional President of the Company . . . ; or (iv) the Company's material breach of this Agreement." (D.I. 6, Ex. A at ¶ 5(e))

Plaintiff initiated this civil action in the Superior Court for the State of Delaware on September 3, 2024. (D.I. 1-1) The action was removed to this court on October 30, 2024, and Defendant filed a motion to dismiss the complaint with prejudice on the same day. (D.I. 1; D.I. 4) Plaintiff filed the FAC on November 8, 2024, asserting causes of action for breach of the employment agreement (Count 1) and a violation of New Hampshire's wage payment law (Count 2). (D.I. 6) Defendant filed the instant motion to dismiss on November 22, 2024. (D.I. 9)

II. LEGAL STANDARD

Rule 12(b)(6) permits a party to move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss, the court must accept as true all factual allegations in the complaint and view them in the light most favorable to the plaintiff. *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 790-91 (3d Cir. 2016).

To state a claim upon which relief can be granted pursuant to Rule 12(b)(6), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although detailed factual allegations are not required, the complaint must set forth sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A claim is facially plausible when the factual allegations allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 663; *Twombly*, 550 U.S. at 555-56.

The court's determination is not whether the non-moving party "will ultimately prevail," but whether that party is "entitled to offer evidence to support the claims." *In re Burlington Coat*

Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997) (internal citations and quotation marks omitted). This "does not impose a probability requirement at the pleading stage," but instead "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [the necessary element]." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Twombly*, 550 U.S. at 556). The court's analysis is a context-specific task requiring the court "to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 663-64.

III. DISCUSSION

A. Count 1: Breach of the Employment Agreement

I recommend that the court DENY Defendant's motion to dismiss Count 1 of the FAC for breach of the Agreement. To state a claim for breach of contract under Delaware law, the plaintiff must allege: "(1) the existence of a contract, whether express or implied; (2) breach of one or more of the contract's obligations; and (3) damages resulting from the breach." *Geico Gen. Ins. Co. v. Green*, 308 A.3d 132, 140 (Del. 2022). The parties dispute only the second element in this case.

Defendant contends that there was no breach because Plaintiff resigned in his correspondence dated April 4, 2024, thereby excusing Defendant of its obligation to pay severance benefits. (D.I. 10 at 6-7) However, Plaintiff's April 4, 2024 email does not unequivocally state Plaintiff's intention to provide notice of his resignation. (D.I. 6, Ex. B) Instead, the email indicates that the parties intended to continue negotiating the terms of Plaintiff's potential departure without any absolute statement by Plaintiff that he was formally resigning. For example, Plaintiff states he "ha[s] had to strongly consider [his] future" with Defendant due to the diminution of his responsibilities, and he "believe[s] that working together

on [his] . . . exit and transition is the best option for all[.]" (*Id.*) It is plausible to infer that Plaintiff was referring to Defendant's apparent intention to terminate his employment without cause under Section 5(d) of the Agreement when he stated that "we discussed the execution of the option to exit with my benefits." (D.I. 6 at ¶¶ 12, 26-27; Ex. A at ¶ 5(d); Ex. B)

Subsequent communications between Plaintiff, Defendant's CEO, and the Chief Human Resources Officer ("CHRO") further support this reading of the FAC. During a meeting on April 16, 2024, the parties disagreed about whether Plaintiff had grounds to resign for Good Reason and whether Plaintiff's prior email constituted a resignation, with Plaintiff insisting that "he ha[d] not resigned and had not provided the requisite notice for the same." (D.I. 6 at ¶ 17) Plaintiff later wrote another email to Defendant's CEO seeking clarification on where to direct the formal notice of his resignation for Good Reason, as required under the Agreement. (*Id.* at ¶ 18) These allegations establish that Plaintiff was aware of the notice requirements in the Agreement, but he did not submit his April 4, 2024 email in accordance with those procedures,[3] supporting his position that his April 4, 2024 email was not a notice of resignation.

Viewing the pleaded facts in the light most favorable to Plaintiff, it is plausible to infer that Plaintiff's April 4, 2024 email was not a "resignation for Good Reason," nor was it a resignation without Good Reason, which would require 90 days' written notice. (*Id.* at ¶¶ 14-18;

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[3] Pursuant to Section 5(e) of the Agreement, Plaintiff could terminate his employment for Good Reason by providing written notice to Defendant within thirty days of Defendant's act or omission giving rise to the termination for Good Reason. (D.I. 6, Ex. A at § 5(e)) Such notice

> shall be in writing and shall be effective when delivered in person, consigned to a reputable national courier service or deposited in the United States mail, postage prepaid, registered or certified . . . at [Defendant's] principal place of business, attention of the Board, or to such other address as either party may specify by notice to the other actually received.

(*Id.* at ¶ 15; Ex. A at § 17)

Ex. A at ¶ 5(f)); *see Iqbal*, 556 U.S. at 678 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."). Instead, the FAC's factual averments support Plaintiff's position that Defendant terminated his employment without cause and failed to fulfill its contractual obligation to pay the Severance Benefits after Plaintiffs termination as required under the terms of the Agreement. (D.I. 6 at ¶¶ 19-24) Consequently, Plaintiff plausibly pleads a claim for Defendant's breach of the Agreement.

B. Count 2: New Hampshire Wage Payment Violation

I further recommend that the court DENY Count 2 of the FAC for violations of New Hampshire's wage payment law. The New Hampshire statute provides that "[v]acation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages[.]" *N.H. Rev. Stat. Ann.* § 275:43(V). Count 2 of the FAC seeks the recovery of Plaintiff's pro rata bonus for 2024 as part of his severance benefits[4] for Defendant's termination of his employment without cause. (D.I. 6 at ¶ 31)

Defendant first contends that Count 2 should be dismissed because New Hampshire wage law is inapplicable to Plaintiff's claim due to Defendant's state of residence and the parties' choice of law provision in the Agreement. (D.I. 10 at 8-9) In support of its argument, Defendant articulates the factors relevant to resolving whether a state's wage law applies to an employee as

[4] Paragraph 5(d) of the Agreement defines "Severance Benefits" as: (i) severance pay at the same rate as the Base Salary, for the period of twelve months following the date of termination of his employment; (ii) a cash bonus in an amount equal to the cash bonus, if any, paid to the Executive by Defendant for the immediately preceding fiscal year; and (iii) a prorated annual bonus, if any, for the period during the year of termination during which the Executive was employed, in an amount determined pursuant to the applicable bonus plan. (D.I. 6, Ex. A at 5)

follows: "(1) Employer's state of incorporation; (2) Location of employer's facilities; (3) Location(s) where employee performs work; (4) Location where employer is benefited by plaintiff's work; (5) Frequency employee and employer interact in state; (6) Choice of law provision in employment agreement; and (7) An employee's ability to bring their claim in another forum." (*Id.* at 8) Because each of these factors presents an issue of fact, weighing them at this stage of the proceedings would be premature. *See Fed. Trade Comm'n v. Shire ViroPharma Inc.*, C.A. No. 17-131-RGA, 2018 WL 1401329, at *7 (D. Del. Mar. 20, 2018) (stating that factual inquiries cannot be resolved at the motion to dismiss stage).

Next, Defendant argues that Count 2 should be dismissed because the FAC does not sufficiently plead that Defendant offers severance pay as "a matter of employment practice or policy" under the statute. (D.I. 10 at 10) Again, this inquiry raises factual issues that are not appropriately resolved on a motion to dismiss. In *ACAS Acquisitions (Precitech) Inc. v. Hobert*, a case cited by Defendant, the New Hampshire Supreme Court determined that severance benefits were not a matter of practice or policy based on the trial court's assessment of evidence that included the employment contracts of other management-level employees and the role of a corporate acquisition in the individualized negotiation of those terms. 923 A.2d 1076, 1093 (N.H. 2007). Consistent with Defendant's cited case authority, the court cannot properly address this inquiry without the benefit of fact discovery.

Finally, Defendant alleges that Count 2 should be dismissed because Plaintiff's severance benefits do not constitute "wages" under New Hampshire law. Instead, Defendant maintains that those benefits are conditioned on Plaintiff's release of claims or non-competition obligations after his termination. (D.I. 10 at 11-12) As Plaintiff explains, however, Defendant's position is not supported by Section 9 of the Agreement, which provides that Plaintiff's non-competition

obligations extend "for a period of twenty-four (24) months after his employment terminates, regardless of the basis or timing of that termination[.]" (D.I. 11 at 14; D.I. 6, Ex. A at ¶ 9(a)) In other words, Plaintiff's post-termination obligations apply regardless of whether he is terminated in a manner that triggers an award of severance benefits. Defendant offers no response to this argument in its reply brief and does not otherwise address Section 9 of the Agreement. (D.I. 12 at 2-3) Consequently, I recommend that the court DENY Defendant's motion to dismiss Count 2 of the complaint.

IV. CONCLUSION

For the foregoing reasons, I recommend that the court DENY Defendant's motion to dismiss the FAC. (D.I. 9)

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(l)(B), Fed. R. Civ. P. 72(b)(l), and D. Del. LR 72.1. The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Report and Recommendation. Fed. R. Civ. P. 72(b)(2). The objections and responses to the objections are limited to four (4) pages each. The failure of a party to object to legal conclusions may result in the loss of the right to de novo review in the District Court. *See Sincavage v. Barnhart*, 171 F. App'x 924, 925 n.1 (3d Cir. 2006); *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987).

The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated March 7, 2022, a copy of which is available on the court's website, http://www.ded.uscourts.gov.

Dated: July 28, 2025

Sherry R. Fallon
United States Magistrate Judge