

CAUSE NO. 2023-77937

STEWART TITLE COMPANY,

Plaintiff,

v.

QUALIA LABS, INC. d/b/a  
QUALIA SOFTWARE, INC.

Defendant.

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THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

**DEFENDANT’S MOTION TO ABATE LAWSUIT**

Defendant Qualia Labs, Inc. d/b/a Qualia Software, Inc. (“Qualia” or “Defendant”) files its Motion to Abate Lawsuit and states as follows:

**I. INTRODUCTION**

This lawsuit arises from a software licensing agreement between Qualia’s predecessor and Stewart Title Company (“Stewart”). The agreement contains a valid and enforceable mandatory arbitration provision. On November 6, 2023, Qualia initiated an arbitration proceeding before the American Arbitration Association (“AAA”) against Stewart as provided by the parties’ agreement. Two days later, Stewart improperly filed this lawsuit. Because Qualia’s and Stewart’s disputes fall within the scope of the applicable agreement’s arbitration provision, Qualia is entitled to resolve its disputes with Stewart in arbitration.

Moreover, the agreement requires the application of the rules of the AAA. This means, as the Texas Supreme Court has recently confirmed in *TotalEnergies E&P USA, Inc. v. MP Gulf of Mexico, LLC*, that the parties have delegated questions of arbitrability to the arbitrator. 667 S.W.3d 694, 708 (Tex. 2023), *reh’g denied* (June 9, 2023). The parties have briefed the issue of arbitrability in the arbitration. The proper course is for the arbitration pending with the AAA to proceed and reach an expeditious resolution of the parties’ disputes, and for this lawsuit to be

abated pending an arbitration decision. Thus, following the Texas Supreme Court’s guidance in *TotalEnergies*, Qualia asks that the Court abate this lawsuit and permit the arbitrators to decide whether the AAA has jurisdiction over the disputes between Qualia and Stewart and then to proceed expeditiously with the pending arbitration.

## II. FACTUAL BACKGROUND

Since its inception in 2015, Qualia has fostered a secure, connected, and automated software ecosystem for managing real estate transactions. Qualia’s real estate and mortgage technology makes buying and selling a home a simple, secure, and enjoyable process for all parties involved. Qualia serves title and escrow operators, title insurance underwriters, mortgage lenders, real estate attorneys, brokerages, and other participants to real estate transactions, including real estate agents and buyers and sellers, throughout the United States. Qualia partners with its customers to provide homebuyers and sellers with the best experience possible.

In December 2020, Qualia acquired Adeptive Software, Inc. (“Adeptive”). Adeptive developed a software platform called ResWare for title and escrow production, a system of record for settlement agents completing real estate transactions. Prior to the acquisition and effective as of May 1, 2015, Stewart contracted with Adeptive to license the ResWare software and for related services. The parties’ contract, titled “ResWare Master License and Services Agreement” (the “Agreement”), was written by Stewart and signed by both parties.<sup>1</sup>

Pursuant to the Agreement, Adeptive licensed ResWare to Stewart and provided related services, including the maintenance and support services in Exhibit B to the Agreement. Upon

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<sup>1</sup> Section 10.1 of the Agreement states that the terms and conditions of the Agreement will be considered confidential information of each party. As such, Qualia does not publicly file a copy of the Agreement, cites only the limited text necessary for the Court’s consideration of this Motion, and will make the Agreement available for in camera review.

acquiring Adeptive in December 2020, Qualia stepped into Adeptive's role and continued licensing Resware to Stewart and providing services under the Agreement.<sup>2</sup>

The Agreement contains the following "Dispute Resolution" provisions, and provides that any disputes not resolved informally will be arbitrated:

13.1 Dispute Resolution.

13.1.1. In the event of a dispute regarding the performance, interpretation, application, breach or claim under this Agreement (each a "**Dispute**"), both parties agree to a twenty (20) business day informal dispute resolution process ("**Informal Process**"), and agree to involve appropriate higher level management to solve the dispute. Except as provided in Section 13.1.3, neither party will invoke formal dispute resolution procedures other than in accordance with this section. Either party may give the other party written notice of any dispute or breach not resolved in the normal course of business. Within five (5) business days after delivery of the receiving party's response, officers or higher level management of the party who have authority to resolve the dispute will meet (in person or by other mutually agreed means) to attempt to resolve the dispute. All reasonable requests for information will be honored. If the matter has not been resolved within twenty (20) business days after the disputing party's initial written notice, either party may commence binding arbitration pursuant to Section 13.1.2 of this Agreement. All negotiations pursuant to this Section 13.1 will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions.

13.1.2. Any Disputes not resolved under Section 13.1.1 will be resolved by final and binding arbitration to be conducted in English using the then-current rules of the American Arbitration Association (the "**Rules**"), applying the laws of the State of Texas, without regard to its conflict of laws principles. The arbitrator will be a panel of three neutral, independent and impartial arbitrators with experience related to software license agreements selected by the parties or, if the parties cannot agree, the arbitrators will be appointed by the AAA. At least one of the arbitrators shall be an attorney licensed to practice law in the State of Texas and familiar with software license agreements. The arbitrator's award will be binding. The arbitrator's decision shall be in writing. Each party will bear its costs of the arbitration; provided, however, that they will equally share the costs of the arbitrators. The arbitration will occur in Houston, Texas. The validity, performance and all other matters pertaining to this Agreement will be governed by, subject to, and construed under the laws of the State of Texas without regard to any conflicts of laws' provisions.

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<sup>2</sup> After the acquisition, Qualia changed the name of the software platform from ResWare to Resware.

13.1.3 Notwithstanding anything to the contrary in this Agreement, either party may seek appropriate injunctive or other equitable relief, at any time, in a court of competent jurisdiction in the event of a breach of Section 10, any infringement or misappropriation of a party's intellectual property rights or when injunctive relief is the only appropriate relief.

See the Agreement at § 13.1 (highlighting added).

Commencing in late summer/early fall of 2022, Qualia began communicating to customers that Qualia intended to adjust the terms for Resware. In January 2023, Qualia began an enterprise-wide campaign to modernize the legacy Resware contracts it inherited from its acquisition of Adeptive, including the Agreement with Stewart.<sup>3</sup> To date, 92% of Qualia's renewals are completed with approximately 89% of Resware customers signing new single-year or multi-year Qualia Master Agreements. The successful migration of the vast majority of Resware customers to new agreements affirms the willingness of Qualia and Resware customers to contract for Resware with an agreement that speaks to the evolved (and improved) way in which Qualia develops Resware and provides the platform to customers.

Stewart's response to Qualia's need to modernize the Agreement—including to update the pricing and license structure with the goal of supporting a long-term strategic partnership between the companies—was in sharp contrast to the 92% of Resware customers who have renewed. Qualia initially wrote to Stewart discussing a new license agreement in January 2023,<sup>4</sup> and provided a full year's advance notice of non-renewal of the Agreement, to occur in January 2024. Stewart's General Counsel responded approximately a month later, and Stewart's legal representatives were

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<sup>3</sup> Qualia's campaign to modernize the legacy Adeptive contracts stemmed from its need to create a viable business model to continue supporting the Resware platform and building additional functionality requested by Resware customers.

<sup>4</sup> In its petition, Stewart makes liberal selective use of specific excerpted portions of the parties' prior correspondence. Stewart does this despite the parties' agreement that all such discussions were to be treated as confidential compromise and settlement negotiations. See the Agreement at § 13.1.1. As such, Qualia has not attached such correspondence here, but has represented that it will provide it during the course of the arbitration or at the arbitrators' earlier request.

subsequently utterly silent regarding this issue for more than six months until Stewart's outside counsel sent a letter to Qualia in August 2023. Subsequently, rounds of letters were exchanged by the parties, during which Qualia extended the noticed non-renewal date by an additional six months to July 24, 2024, for a total of 18 months, to alleviate Stewart's concerns and address its complaints regarding Qualia's stated need for a reasonable time to transition to a replacement software system. Finally, an in-person meeting between Qualia's and Stewart's respective business principals and legal counsel took place on November 2, 2023, but no resolution was reached.

Despite Qualia's best efforts to negotiate, Stewart steadfastly maintains it has no desire to enter into a modernized agreement and disagrees with Qualia's interpretation of the Agreement as terminable at will under Texas law because the Agreement is of indefinite duration. In light of the impasse reached at the November 2, 2023 meeting, on November 6, 2023, Qualia initiated an arbitration proceeding with the AAA in accordance with Section 13.1.2 of the Agreement and sought a declaratory judgment (i) that it has the right to terminate the Agreement, (ii) that it has the right to terminate maintenance and support services under Exhibit B, Maintenance and Support Services, to the Agreement, and (iii) adjudicating remaining rights of the parties following such termination. Two days later, on November 8, 2023, in stark contradiction to Section 13.1 of the Agreement, Stewart filed this lawsuit against Qualia, seeking declaratory judgment and injunctive relief. *See* Stewart's November 8, 2023 Petition.

Stewart's deadline to respond to Qualia's arbitration demand was November 22, 2023. Stewart's General Counsel engaged in a teleconference with Qualia's General Counsel and requested a 30-day extension of deadlines in the arbitration and this lawsuit, and Qualia's General Counsel agreed. Thus, on December 22, 2023, Stewart submitted its objection to arbitration to the AAA. On January 3, 2024, subject to and without waiving its right to arbitrate the disputes, Qualia

filed its original answer and general denial in this lawsuit. On January 8, 2024, Qualia submitted its response to Stewart’s objection to arbitration—accordingly, the issue of arbitrability of the parties’ disputes has been briefed and submitted in the arbitration. On January 12, 2024, only nine days after Qualia filed its original answer and general denial, Stewart filed its motion for summary judgment in this action. The parties have taken no discovery, and the Court has not yet issued a Docket Control Order in this action. On January 19, 2024, a week after filing its motion for summary judgment, Stewart filed its notice of hearing on that motion. The hearing is set for February 12, 2024.

Qualia contends the parties’ disputes must be resolved in the pending arbitration subject to the mandatory arbitration provision in the Agreement. On January 22, 2024, the AAA provided a list of names from which three arbitrators are to be appointed. By February 5, 2024, Qualia and Stewart must confer on the list and provide up to five names to strike from the list if an agreement cannot be reached between the parties on the arbitrators. Upon appointment of the arbitrators, a preliminary telephone conference will be held promptly.

Accordingly, Qualia now files this motion and asks the Court to abate this lawsuit to permit the arbitrators to decide whether the AAA has jurisdiction over the disputes between Qualia and Stewart, as directed by the Texas Supreme Court in *TotalEnergies*.

### **III. ARGUMENT AND AUTHORITIES**

Stewart and Adeptive delegated the arbitrability of claims regarding the Agreement to the arbitrators—specifically, a three-person panel as provided in Section 13.1.2 of the Agreement (the “Arbitrators”); thus, the Arbitrators must decide arbitrability of Qualia’s and Stewart’s disputes. Section 13.1.2 contains a valid and enforceable arbitration provision, and Qualia’s and Stewart’s disputes fall within the scope of that arbitration provision. Accordingly, Qualia asks this Court to

abate this lawsuit and permit the Arbitrators to determine the jurisdiction of the AAA over the disputes between Qualia and Stewart and then to proceed with the pending arbitration.

**A. The Arbitrators Must Decide Arbitrability of Qualia’s and Stewart’s Disputes.**

The Arbitrators must decide issues of arbitrability relating to the Agreement—not this Court. The Texas Supreme Court has recently prescribed that “an agreement to arbitrate in accordance with the AAA or similar rules constitutes a clear and unmistakable agreement that **the arbitrator must decide** whether the parties’ disputes must be resolved through arbitration.” *TotalEnergies*, 667 S.W.3d at 708 (emphasis added). In reaching this conclusion, the Texas Supreme Court noted the AAA rules state the arbitrator “shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim.” *Id.* at 709 (citing AM. ARB. ASS’N. R-7(a) (2013)). Further, “[w]hen the contract delegates the arbitrability question to an arbitrator, a court may not override the contract.” *In re Hughes*, No. 01-22-00199-CV, 2022 WL 11413123, at \*3 (Tex. App.—Houston [1st Dist.] Oct. 20, 2022, no pet.); *see also Rhoads v. McBee*, No. 07-23-00047-CV, 2022 WL 20485142, at \*4 (Tex. App.—Amarillo Aug. 8, 2022, no pet.) (Where “the arbitrator has been given the authority to determine arbitrability by the parties, the court has no authority to determine a question of arbitrability.”). In fact, the arbitrator must decide the question of arbitrability even when “the parties arbitration agreement may cover only some disputes while carving out others.” *Hoffman v. Baker Hughes Co.*, No. 14-22-00289-CV, 2023 WL 3750131, at \*2 (Tex. App.—Houston [14th Dist.] June 1, 2023, no pet.) (quoting *TotalEnergies*, 667 S.W.3d at 719).

Just as in *TotalEnergies*, the Agreement requires arbitration to be conducted under the rules of the AAA. Section 13.1.2 of the Agreement states that “[a]ny Disputes not resolved under 13.1.1

will be resolved by final and binding arbitration to be conducted in English **using the then-current rules of the American Arbitration Association (the “Rules”)**, applying the laws of the State of Texas, without regard to its conflict of laws principles.” The Agreement at § 13.1.2 (emphasis added). By invoking the rules of the AAA, Stewart and Adeptive necessarily delegated the issue of arbitrability to the arbitrator. *See TotalEnergies*, 667 S.W.3d at 709-12 (finding the parties delegated arbitrability to the arbitrators where the agreement stated the arbitration must be conducted “*in accordance with the rules of the AAA*”) (emphasis in original); *see also Rhoads*, 2022 WL 20485142, at \*5-6.

To the extent Stewart argues the parties did not reach a clear and unmistakable agreement that the arbitrator must decide arbitrability because the Agreement’s language does not specify arbitration must be conducted according to the “Commercial Rules” of the AAA, such language is not necessary to delegate the decision of arbitrability to the Arbitrators. In *Rhoads*, the parties’ agreement provided as follows: “Any dispute, claim or controversy arising out of this operating agreement will be settled by arbitration in Lubbock, Texas. Such arbitration shall be conducted in accordance with the rules of the American Arbitration Association.” *Rhoads*, 2022 WL 20485142, at \*5. Following the Texas Supreme Court’s guidance in *TotalEnergies*, the Seventh Court of Appeals found this language—which does not specify the “Commercial Rules”—invoked the rules of the AAA and delegated the issue of arbitrability to the arbitrator. *Id.* at \*5-6. Similarly, Section 13.1.2 states that disputes “will be resolved by final and binding arbitration to be conducted in English using the then-current rules of the American Arbitration Association (the “Rules”)[.]” The Agreement at § 13.1.2. Thus, the parties reached a clear and unmistakable agreement that the question of arbitrability of claims related to the Agreement is reserved exclusively to the Arbitrators. *See Rhoads*, 2022 WL 20485142, at \*4.



**B. This Lawsuit Should Be Abated.**

Stewart's filing of this lawsuit contradicts the dispute resolution provisions of the Agreement. The Arbitrators can reach a decision expeditiously and efficiently, as the parties contemplated and specifically contracted for in the Agreement. As shown above, the Arbitrators must decide whether the issues and causes of action alleged by Stewart in this lawsuit are within the scope of the Agreement's arbitration provision. Therefore, the pending arbitration should proceed, and this lawsuit should be abated pending arbitration. *See Hoffman*, 2023 WL 3750131, at \*3 ("The [Texas Arbitration Act] clearly mandates a stay of the litigation pending arbitration.").

**IV. CONCLUSION**

Qualia respectfully asks that the Court grant its Motion to Abate Lawsuit, abate this lawsuit and permit the arbitrators to decide whether the AAA has jurisdiction over the disputes between Qualia and Stewart, and grant Qualia any other or further relief to which it may be legally or equitably entitled.

Dated: January 22, 2024

Respectfully submitted,

/s/ Maeghan E. Whitehead

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**QUALIA LABS, INC. d/b/a**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on January 22, 2024, I conferred with Roland Garcia, counsel for Plaintiff Stewart Title Company, regarding Defendant’s Motion to Abate Lawsuit (the “Motion”), and Mr. Garcia confirmed that Plaintiff Stewart Title Company opposes the relief sought in this Motion.

/s/ Maeghan E. Whitehead  
Maeghan E. Whitehead

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record electronically via the Court’s e-filing system on this 22nd day of January, 2024.

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Filing Description: DEFENDANT'S MOTION TO ABATE LAWSUIT

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