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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 16-5344 CW

CPB CONTRACTORS PTY LIMITED,

Plaintiff,

v.

CHEVRON CORPORATION, et al.,

Defendants.

ORDER DENYING  
PLAINTIFF'S MOTION  
TO REMAND AND  
GRANTING  
DEFENDANTS' MOTION  
TO STAY

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Plaintiff CPB Contractors Pty Limited has filed a motion to remand this case to state court. Defendants Chevron Corporation, Chevron U.S.A. Holdings, Inc., Chevron U.S.A., Inc., Chevron Investments, Inc., Chevron Overseas Company, and Chevron Australia Petroleum Company oppose the motion and move to stay this action pending the resolution of binding arbitration between Plaintiff and another Chevron entity, Chevron Australia, which is not a party to this case.<sup>1</sup> Plaintiff opposes Defendants' motion. Having considered the parties' papers and oral argument, the Court

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<sup>1</sup> Although Defendants title their document as a motion to stay and to compel arbitration, they do not seek to compel arbitration of the claims against them. Accordingly, the Court refers to the motion as a motion to stay.

1 DENIES Plaintiff's motion to remand and GRANTS Defendants' motion  
2 to stay.<sup>2</sup>

3 BACKGROUND

4 Plaintiff is a contractor that, as part of the Saipem  
5 Leighton Consortium (SLC), was awarded a contract to design and  
6 construct the Gorgon Jetty, a 1.3 mile jetty for a liquefied  
7 natural gas project off the coast of Australia. The Jetty  
8 Contract became effective November 10, 2009. The owner of the  
9 jetty project is a joint venture consisting of Chevron Australia  
10 and others. Plaintiff alleges that Chevron Australia is a  
11 partially-owned subsidiary of Defendant Chevron Corporation. The  
12 Jetty Contract contains a mandatory dispute resolution provision  
13 which requires that disputes be referred to direct negotiations  
14 between the parties, followed by an optional reference to a  
15 dispute board, and then binding arbitration.

16 On May 2, 2012, the parties to the contract signed a one page  
17 "Gorgon Jetty Team Charter," which states:

18 The Gorgon Jetty Team will create and maintain an open,  
19 trusting, honest and cooperative culture to work with  
20 integrity as ONE TEAM to "do what we say we will do."  
Further, we commit to the following behaviours:

21 The Health and Safety of our collective workforce is our  
22 core value.

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23 <sup>2</sup> Plaintiff has filed objections to evidence submitted with  
24 Defendants' reply in support of their motion to stay. In fact,  
25 Plaintiff objects to a certain analysis of Western Australian law.  
26 Defendants have filed a motion for leave to file a response to  
27 that objection. However, the Court finds that principles of  
28 Australian law are not relevant to its decision on these motions.  
Accordingly, Plaintiff's objection is overruled and Defendants'  
motion for leave to respond to the objection is DENIED as MOOT.  
Docket No. 57.

1 We will deliver our project to the quality required in a  
timely manner.

2 We will support the workforce with robust leadership,  
3 timely decision making and detailed planning to safely  
and efficiently deliver the Gorgon Jetty in a manner  
4 that our entire team can be proud of.

5 We will work in an environment of learning where  
everyone has a voice and all views are respected.

6 We will work as ONE TEAM to solve problems and make  
7 decisions necessary to establish the best construction  
results with a win-win perspective while protecting the  
8 environment of Barrow Island. Once a decision is  
reached, we will speak with one voice.

9 We will demonstrate a CAN-DO approach to deliver the  
10 Gorgon Jetty for Chevron.

11 We commit to assessing our alignment with these values,  
principles and behaviours regularly, implementing  
12 improvement opportunities, and reporting our progress to  
the sponsors and our team.

13 Docket No. 10-3, Ex. D. Plaintiff alleges that Defendants signed  
14 the Jetty Charter.

15 On June 8, 2012, the parties to the Jetty Contract executed a  
16 contract amendment entitled "Deed of Settlement and Release." The  
17 Deed of Settlement provided that it

18 is intended to provide a clean sweep resolution of  
19 absolutely all possible claims by Contractor in respect  
of the Contract up to and including the Settlement Date.  
20 The adjustments to the Contract Price, Agreement  
Schedule and Time(s) for Completion set out in this Deed  
21 are, and are intended always to remain, Contractor's  
sole remedies against Owner Group and Company Group in  
22 respect of all such matters.

23 Docket No. 10-5 at 1.

24 Plaintiff alleges that Chevron Australia and other members of  
25 the joint venture repeatedly wrongfully rejected Plaintiff's  
26 change order requests and requests for adjustments to the contract  
27 price for work that the joint venture requested Plaintiff to  
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1 perform. Plaintiff further alleges on information and belief that  
2 Defendants in this case in bad faith instructed Chevron Australia  
3 and other members of the joint venture to take these actions.

4 On August 19, 2016, Plaintiff filed the instant action in  
5 Contra Costa County Superior Court, asserting two state-law  
6 claims, intentional interference with the Jetty Contract and  
7 breach of the Jetty Charter. On September 19, 2016, Defendants  
8 filed a joint notice of removal to this Court. On September 20,  
9 2016, non-party Chevron Australia initiated arbitration in  
10 Australia in accordance with the requirements of the Jetty  
11 Contract. Defendants have filed a motion to stay or, in the  
12 alternative, to dismiss Plaintiff's claims. Plaintiff has filed a  
13 motion to remand.

#### 14 DISCUSSION

##### 15 I. Motion to Remand

16 Defendants' notice of removal alleged that removal is proper  
17 because

18 (1) Plaintiff is a party to an agreement that includes  
19 an arbitration provision that falls under the Convention  
20 on the Recognition and Enforcement of Foreign Arbitral  
21 Awards ("New York Convention" or "Convention") (see 9  
USC § 202) and (2) the subject matter of the litigation  
relates to the arbitration agreement (see 9 USC § 205).

22 Docket No. 1 at 2. Defendants further alleged that "the Court  
23 also has Diversity Jurisdiction under 28 U.S.C. § 1332(a)(2) as  
24 Plaintiff is a 'subject of a foreign state' and Defendants are  
25 citizens of California." Id. at 9 n.3.

26 Plaintiff moves to remand this case to state court, arguing  
27 that removal was improper under the New York Convention cited and,  
28

1 even if removal was proper, the Court lacks subject matter  
2 jurisdiction over its claims.

3 A. Removal Jurisdiction

4 Title 9 U.S.C. § 205 provides that federal courts have  
5 removal jurisdiction “[w]here the subject matter of an action or  
6 proceeding pending in a State court relates to an arbitration  
7 agreement or award falling under the Convention.” The Ninth  
8 Circuit has held that “whenever an arbitration agreement falling  
9 under the Convention could conceivably affect the outcome of the  
10 plaintiff’s case, the agreement ‘relates to’ the plaintiff’s  
11 suit.” Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc., 631  
12 F.3d 1133, 1138 (9th Cir. 2011) (quoting Beiser v. Weyler, 284  
13 F.3d 665, 699 (5th Cir. 2002)) (emphasis in original).

14 Defendants argue that both of Plaintiff’s claims against them  
15 are related to the ongoing arbitration of Plaintiff’s dispute with  
16 Chevron Australia. As Defendants note, Plaintiff’s description of  
17 the nature of the action is that

18 the Chevron U.S. Defendants in bad faith instructed  
19 their Australian subsidiary, Chevron Australia Pty  
20 Limited (“Chevron Australia”), and other contracting  
21 parties to repeatedly and wrongfully reject Plaintiff’s  
22 fully-supported “Change Order Requests,” or Plaintiff’s  
23 requests for adjustments to the contract price for  
24 additional work specifically requested by the project  
25 owner and/or its agent that was not within the scope of  
26 work for the project.

27 Complaint ¶ 2. Indeed, the 423 paragraph complaint consists  
28 primarily of alleged actions by non-parties Chevron Australia and  
other members of the joint venture that Plaintiff alleges  
constituted breaches of the Jetty Contract. Each section  
describing such conduct is followed by a paragraph alleging, “On

1 information and belief, the Chevron U.S. Defendants in bad faith  
2 instructed and directed Chevron Australia and the other members of  
3 Chevron JV" to take those actions. See, e.g., Complaint ¶¶ 52,  
4 66, 86, 89, 110, 153, 182.

5 Accordingly, Defendants argue that Plaintiff's claims against  
6 them stand or fall on whether Chevron Australia and the other  
7 members of the joint venture actually breached the Jetty Contract.  
8 Plaintiff does not dispute that the same alleged breaches by  
9 Chevron Australia and the members of the joint venture are at  
10 issue here and in the Australian arbitration, nor does it dispute  
11 that the arbitration agreement in the Jetty Contract falls under  
12 the Convention. Instead, it argues that there is no removal  
13 jurisdiction because this case does not "relate to" the  
14 arbitration agreement. First Plaintiff argues that there is no  
15 removal jurisdiction because Defendants are not parties to the  
16 arbitration agreement and are not seeking to have the claims  
17 against them determined in the arbitration. Plaintiff further  
18 argues that, under California law, a claim for tortious  
19 interference with contract does not require a breach of contract.  
20 Accordingly, Plaintiff disputes Defendants' contention that the  
21 arbitration, if it determines that there was no breach of  
22 contract, will moot Plaintiff's claims against them. Both of  
23 these arguments fail.

24 The Ninth Circuit has specifically held that there is no  
25 requirement that the removing party be a party to the qualifying  
26 arbitration agreement. In Infuturia, the Ninth Circuit affirmed a  
27 district court's denial of a motion to remand in a case in which  
28 the defendant, who was not a party to the arbitration agreement

1 removed the case pursuant to § 205 after asserting “the  
2 affirmative defense of collateral estoppel, arguing that [the  
3 issues raised in the case] had already been resolved against [the  
4 plaintiff]]” in an Israeli arbitration. 631 F.3d at 1136. Here,  
5 Defendants cannot raise a collateral estoppel defense because the  
6 Australian arbitration is not complete. However, Infuturia is  
7 still instructive. In response to the plaintiff’s argument that  
8 privity of contract was a prerequisite to removal jurisdiction,  
9 the panel cited the broad language in Beiser and “decline[d] to  
10 add any prerequisites to removal jurisdiction not expressed in the  
11 language of the statute.” Id. at 1139. Although Defendants  
12 cannot raise an affirmative defense of collateral estoppel at this  
13 time, the outcome of the Australian arbitration regarding the  
14 propriety of Chevron Australia’s rejection of Plaintiff’s change  
15 order requests and requests for adjustments to the project cost  
16 “could conceivably affect the outcome of plaintiff’s” claims that  
17 Defendants tortiously interfered with the Jetty Contract and  
18 breached the Jetty Charter. Id. at 1138 (quoting Beiser, 284 F.3d  
19 at 669).

20 Plaintiff further argues that, under California law, non-  
21 mutual collateral estoppel does not apply to arbitration awards.  
22 Even assuming this is true, and Plaintiff were not estopped from  
23 making its claims against Defendants, a finding that Chevron  
24 Australia’s actions did not constitute a breach of the Jetty  
25 Contract could still have some impact on Defendants’ defense to  
26 Plaintiff’s claims. Similarly, Plaintiff’s argument that  
27 California law allows for a tortious interference of contract  
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1 claim, even in the absence of an actual breach of contract, does  
2 not undermine the fact that a decision against Plaintiff in the  
3 Australian arbitration could affect its claims against Defendants  
4 here. The Court finds that it has removal jurisdiction under 9  
5 U.S.C. § 205.

6 B. Subject Matter Jurisdiction

7 Plaintiff next argues that this Court lacks subject matter  
8 jurisdiction. Defendants counter that the Court has diversity  
9 jurisdiction as well as subject matter jurisdiction under 9 U.S.C.  
10 § 203. District courts have original jurisdiction over all civil  
11 actions "where the matter in controversy exceeds the sum or value  
12 of \$75,000, exclusive of interest and costs, and is between . . .  
13 citizens of different States." 28 U.S.C. § 1332(a). When federal  
14 subject matter jurisdiction is predicated on diversity of  
15 citizenship, complete diversity must exist between the opposing  
16 parties. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-  
17 74 (1978). Here, Plaintiff does not dispute that complete  
18 diversity exists. Instead, it argues that Defendants are citizens  
19 of California and are therefore precluded from removing this case  
20 under 28 U.S.C. 1441(b)(2), which provides that an action may not  
21 be removed based on diversity jurisdiction "if any of the parties  
22 in interest properly joined and served as defendants is a citizen  
23 of the State in which such action is brought." However, in  
24 Infutura, the Ninth Circuit held that "the forum defendant rule  
25 and the requirement for diversity at the time of removal are  
26 statutory requirements imposed by the general removal statute, 28  
27 U.S.C. § 1441, not jurisdictional requirements." 631 F.3d at 1137  
28

1 (citing Lively v. Wild Oats Markets, Inc., 456 F.3d 933, 939 (9th  
2 Cir. 2006)). The panel concluded that, where removal is  
3 “effectuated under 9 U.S.C. § 205, the traditional diversity  
4 removal provisions of 28 U.S.C. § 1441 do not apply.” Id.

5 Accordingly, the Court finds that it has subject matter  
6 jurisdiction based on diversity of citizenship. The Court need  
7 not decide whether jurisdiction exists under § 203.

8 Because the Court finds that it has removal jurisdiction  
9 under 9 U.S.C. § 205 and subject matter jurisdiction based on  
10 diversity of citizenship, it denies Plaintiff’s motion to remand.

11 II. Motion to Stay

12 Defendants have filed a motion pursuant to 9 U.S.C. § 3 to  
13 stay the case against them pending the resolution of the  
14 arbitration between Plaintiff and Chevron Australia. Section 3  
15 provides,

16 If any suit or proceeding be brought in any of the  
17 courts of the United States upon any issue referable to  
18 arbitration under an agreement in writing for such  
19 arbitration, the court in which such suit is pending,  
20 upon being satisfied that the issue involved in such  
21 suit or proceeding is referable to arbitration under  
such an agreement, shall upon application of one of the  
parties stay the trial of the action until such  
arbitration has been had in accordance with the terms of  
the agreement.

22 9 U.S.C. § 3. Defendants argue that the Jetty Contract is a valid  
23 agreement to arbitrate and this case involves Chevron Australia’s  
24 alleged breach of that agreement, which is an issue referable to  
25 arbitration. Plaintiff counters that Defendants in this case  
26 cannot enforce the arbitration agreement and, therefore, there are  
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1 no issues referable to arbitration in this case. However, the  
2 statute does not require that the claims in the instant suit be  
3 referable to arbitration. Rather, it requires that an "issue  
4 involved in [the] suit" be referable to arbitration. Id.

5 The Ninth Circuit has not addressed whether § 3 applies where  
6 the moving party is not a signatory to the arbitration agreement.  
7 However, the Fifth Circuit has held that § 3 allows a court to  
8 stay claims against a non-signatory based on an arbitration  
9 agreement where "litigation of the claims against the nonsignatory  
10 [] would have adversely affected the signatory's right to  
11 arbitration." Hill v. GE Power Systems, Inc., 282 F.3d 343, 347  
12 (5th Cir. 2002) (citing Subway Equipment Leasing Corp. v. Forte,  
13 169 F.3d 324, 329 (5th Cir. 1999)). The Fifth Circuit has also  
14 stayed claims against a "nonsignatory corporation whose potential  
15 liability arose from and was inseparable from the claims against  
16 its owner, who did sign an arbitration agreement." Id. (citing  
17 Harvey v. Joyce, 199 F.3d 790, 795 (5th Cir. 2000)).

18 The Fifth Circuit noted that Subway was the first case in  
19 which it applied § 3 to a nonsignatory, but held that such  
20 application was consistent with its longstanding rule that "if a  
21 suit against a nonsignatory is based upon the same operative facts  
22 and is inherently inseparable from the claims against a signatory,  
23 the trial court has the discretion to grant a stay if the suit  
24 would undermine the arbitration proceedings and thwart the federal  
25 policy in favor of arbitration." Id. (citing Sam Reisfeld & Son  
26 Import Co. v. S.A. Eteco, 530 F.2d 679, 681 (5th Cir. 1976)). The  
27 Ninth Circuit has similarly held that a district court has the  
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1 discretion to stay claims "if it finds that course advisable in  
2 view of their interdependence with claims properly referred to  
3 arbitration." Lake Communications, Inc. v. ICC Corp., 783 F.2d  
4 1473, 1477 (9th Cir. 1984) (citing Moses Cone Memorial Hospital v.  
5 Mercury Construction Corp., 460 U.S. 1, 20 n.23 (1983)). As in  
6 Hill and the cases cited therein, the claims in this case are  
7 based on the same operative facts as Plaintiff's claims that are  
8 currently being arbitrated against Chevron Australia.  
9 Accordingly, the Court finds that § 3 applies to the claims in  
10 this case.

11 Plaintiff again raises its arguments that the Australian  
12 arbitration will have no preclusive effect on its claims against  
13 Defendants here and that, even if no breach of contract by Chevron  
14 Australia is found, Defendants may still be liable for tortious  
15 interference with contract. However, the application of § 3 to  
16 this case is not based on Defendants' ability to base their  
17 defense on the arbitration award. Instead, it is based on the  
18 possibility that proceeding with this case will interfere with  
19 Chevron Australia's right to have the claims against it decided in  
20 arbitration.

21 Accordingly, the Court grants Defendants' motion to stay this  
22 case pending the resolution of the Australian arbitration.

#### 23 CONCLUSION

24 For the foregoing reasons, the Court DENIES Plaintiff's  
25 motion to remand (Docket No. 47) and GRANTS Defendants' motion to  
26 stay this case pending the resolution of the Australian  
27 arbitration. This order administratively terminates this action  
28 until the arbitration is complete. Nothing in this order shall be

1 considered a dismissal or disposition of this case. The parties  
2 are directed to file a notice with this Court within seven days of  
3 the resolution of the arbitration.

4 IT IS SO ORDERED.

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6 Dated: January 17, 2017



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CLAUDIA WILKEN  
United States District Judge

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