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Clerk  
District Court

APR 20 2017

for the Northern Mariana Islands  
By   
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

VINCENT DLG. TORRES,

Plaintiff,

vs.

E-LAND WORLD, LTD., SUWASO  
CORPORATION, MICRONESIAN RESORT,  
INC., ROH, JONG-HO, SEONG MIN KANG,  
IL KYU KIM, TAE HO KIM, STEVE  
HWANG, DENNIS SEO, AND DOES 1-3,

Defendants.

Case No.: 1:16-cv-00004

**DECISION AND ORDER GRANTING IN  
PART AND DENYING IN PART  
PLAINTIFF’S MOTION TO REMAND,  
AND DENYING DEFENDANTS’  
MOTION TO COMPEL ARBITRATION,  
MOTION TO DISMISS OR TO STAY  
THE SECOND TO FIFTH CAUSES OF  
ACTION**

**I. INTRODUCTION**

On February 5, 2016, Defendants E-Land World, Ltd. (“E-Land”), Suwaso Corporation (“Suwaso”), Micronesian Resort, Inc. (“MRI”), and Dennis Seo (“Seo”) (collectively “Defendants”), the only defendants served to date, filed a notice of removal of Plaintiff Vincent DLG. Torres’s lawsuit from the Commonwealth Superior Court to this district court pursuant to Chapter 2 of the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 201-208. The basis of Defendants’ removal is an arbitration clause in a Purchase and Sale Agreement of capitol stock of Suwaso Corporation (the “Agreement”) executed between Defendants and a non-party, Yusuke Fumoto. Fumoto was the majority shareholder of Suwaso’s stock and its chief asset, Coral Ocean Point Golf Course (“COP”). He authorized Torres, a minority shareholder in Suwaso, to negotiate the Agreement on his behalf to sell his majority interest in Suwaso to MRI, E-Land’s designee. Torres alleges in the Complaint that Defendants made several fraudulent representations to him regarding Defendants’ plans for COP during negotiations surrounding the Agreement, which he relied on to

1 his detriment as a minority shareholder. Torres also alleges that Defendants failed to comply with  
2 general corporate law duties following execution of the Agreement.

3 The Court, having already granted the motion to compel arbitration as to the first claim  
4 (Minute Entry, ECF No. 16), now rules on the motions as to the remaining four claims. Before the  
5 Court are Defendants' Motion to Compel Arbitration and Dismiss, or, Alternatively, Stay Action  
6 (Mot. to Compel Arb. and Dismiss, ECF No. 5) and Torres's Motion to Remand (Mot. to Remand,  
7 ECF No. 8). The motions have been fully briefed.<sup>1</sup> After considering all the papers, hearing  
8 argument of counsel for both parties, and reviewing the applicable law, the Court, as to the  
9 remaining causes of action, grants Torres's motion to remand and denies Defendants' motion to  
10 compel arbitration. Further, the Court denies Defendants' motion to dismiss, or, alternatively, stay  
11 action.

## 14 II. FACTUAL BACKGROUND

15 In 2011, Torres and Fumoto, a Japan hotelier, jointly purchased Suwaso, which owns COP.  
16 (Compl. ¶¶ 21–26, ECF No. 1-3.) Fumoto purchased the majority of Suwaso shares while Torres  
17 acquired the minority shares. (Compl. ¶ 26.) Shortly thereafter, Fumoto sought to sell his shares  
18 and gave Torres “full authority to negotiate the sale of Suwaso on his behalf.” (Compl. ¶ 31.)  
19 Torres alleges that E-Land, a Korean corporation and the sole shareholder of MRI, a CNMI  
20 corporation, made several representations to him during negotiations to induce Torres to persuade  
21 Fumoto to sell his shares. (Compl. ¶¶ 35–37.) These representations included, but were not limited  
22 to, the following: (1) that E-land would keep Torres fully informed of all Suwaso plans and actions;

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28 <sup>1</sup> Opp'n to Mot. to Compel Arb. and Dismiss (ECF No. 9); Reply to Opp'n to Mot. to Compel Arb. and Dismiss  
(ECF No. 15); Opp'n to Mot. to Remand (ECF Nos. 10, 11); Reply to Opp'n to Mot. to Remand (ECF No. 14).

1 (2) that Torres would remain on as a director of Suwaso; (3) that the property upon which COP  
2 sits would be purchased in fee simple to be held in Torres's name, with Torres leasing the property  
3 to Suwaso for 55 years; (4) that E-Land would comply with all requirements of the public land  
4 lease agreement; and (5) that E-Land would satisfy all debts owed by Suwaso. (Compl. ¶¶ 34–38.)  
5  
6 On August 23, 2012, MRI and Fumoto executed the Agreement whereby Fumoto agreed to sell  
7 his 85% ownership interest in Suwaso to MRI. (Ex. A (the "Agreement"), ECF No. 5-3.)<sup>2</sup> Torres  
8 remains a minority shareholder of Suwaso stock, holding a 15% ownership interest. (Compl. ¶ 37.)

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10 Following execution of the Agreement, Torres alleges that E-Land and all of its agents,  
11 employees, and designees controlling MRI and Suwaso denied him access to the books and records  
12 of Suwaso pursuant to Suwaso bylaws and 4 CMC §§ 4681–83; failed to provide him with a proper  
13 accounting; failed to provide him with a yearly report as required by the bylaws; usurped corporate  
14 opportunities that rightfully belong to Suwaso; and negotiated loans of more than \$5 million  
15 without proper authorization. (Compl. ¶ 40.)

### 16 17 **III. PROCEDURAL POSTURE**

18 Torres filed suit against Defendants in the Commonwealth Superior Court on October 19,  
19 2015 asserting five causes of action based upon fraudulent misrepresentation, accounting,  
20 fraudulent concealment and usurpation of corporate opportunity, breach of fiduciary duty, and  
21 assisting a breach of fiduciary duty. (Compl. ¶¶ 45–96.) On February 5, 2016, Defendants filed a  
22 notice to remove the lawsuit to this Court pursuant to the FAA, 9 U.S.C. § 205, which governs  
23 removal of cases relating to an arbitration agreement falling under the Convention on the  
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28 <sup>2</sup> Although the Agreement contemplated the full transfer of Fumoto's ownership interest in Suwaso to MRI, Fumoto  
continues to hold 5% of Suwaso's stock. (Mot. to Compel Arb. and Dismiss 4.)

1 Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”) from state courts.  
2 (Notice of Removal, ECF No. 1.) Defendants then filed a motion to compel arbitration and dismiss,  
3 or, alternatively, stay action. (Mot. to Compel Arb. and Dismiss, ECF No. 5.) Torres responded  
4 with a motion to remand the lawsuit back to state court. (Mot. To Remand, ECF No. 8.)  
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6 At the motions hearing, Torres agreed to voluntarily submit to arbitration on the first cause  
7 of action, fraudulent misrepresentation, and asked the Court to remand as to the four remaining  
8 claims. (Minute Entry, ECF No. 16.) After hearing argument from both parties, the Court granted  
9 Defendants’ motion to compel arbitration as to the first cause of action. *Id.* The Court now grants  
10 the motion to remand the remaining four causes of action.  
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#### 12 IV. DISCUSSION

##### 13 A. Propriety of Defendants’ Removal of the Case to the District Court

14 Defendants have removed the instant case from state court pursuant to Chapter 2 of the  
15 FAA, 9 U.S.C. §§ 201–208. (Notice of Removal 1, ECF No. 1.) Defendants argue that removal is  
16 proper because the FAA provides expansive removal jurisdiction to federal courts, the Agreement  
17 falls under the New York Convention over which federal courts have original jurisdiction, and all  
18 five of Torres’s claims relate to the Agreement. (Notice of Removal ¶¶ 39–81.) Torres argues that  
19 this Court lacks removal jurisdiction because the Agreement does not fall under the New York  
20 Convention, and Defendants have failed to raise a “conceivable” argument that the arbitration  
21 provision would impact the disposition of this case. (Memo. in Support of Mot. to Remand 4, ECF  
22 No. 8-1.) Torres, having agreed to submit to arbitration on the first cause of action, now requests  
23 that the Court remand as to the remaining four state causes of action. (Minute Entry, ECF No. 16.)  
24 Prior to addressing the motion to remand, the Court must determine whether removal to this Court  
25 is proper.  
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1           1.       Legal Standard for Removal

2           Removal to a district court is proper “[w]here the subject matter of an action or proceeding  
3 pending in a State court relates to an arbitration agreement or award falling under the Convention.”  
4 9 U.S.C. § 205. While courts generally “strictly construe the removal statute against removal  
5 jurisdiction,” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992), “the plain language of § 205  
6 provides federal courts with remarkably broad removal authority.” *Infuturia*, 631 F.3d at 1138 n.5  
7 (*citing Beiser v. Weyler*, 284 F.3d 665, 674 (5th Cir. 2002)). “[W]henver an arbitration agreement  
8 falling under the Convention could *conceivably* affect the outcome of the plaintiff’s case, the  
9 agreement ‘relates to’ the plaintiff’s suit.” *Infuturia Global Ltd. v. Sequus Pharm., Inc.*, 631 F.3d  
10 1133, 1137–39 (9th Cir. 2011) (*quoting Beiser*, 284 F.3d at 669 (emphasis in original)).

13           Section 205 provides that a case may be removed to a district court “whose relation to an  
14 agreement or award under the Convention is based on an affirmative defense.” *Infuturia*, 631 F.3d  
15 at 1138; *see* 9 U.S.C. § 205 (“[T]he ground for removal provided in this section need not appear  
16 on the face of the complaint but may be shown in the petition for removal.”). Section 205 is  
17 triggered by “just about any suit in which a defendant contends that an arbitration clause falling  
18 under the Convention provides a defense.” *Id.* at 1138 (*quoting Beiser*, 284 F.3d at 669).

20           2.       Removal Jurisdiction over Torres’s Claims

21           Here, the Court finds that the subject matter of Torres’s first cause of action “relates to”  
22 the Agreement because the Agreement contains an arbitration clause and Torres’s claim of  
23 misrepresentation relates to the Agreement itself. This conclusion is supported by the following  
24 undisputed facts regarding the first cause of action. Torres acted as Fumoto’s agent during  
25 negotiations; Torres aimed to benefit from E-Land’s promise in Section IV.C of the Agreement to  
26 pay all of Suwaso’s debts properly disclosed before the sale which included obligations to Torres  
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1 (see Declaration of YuanKyu Jung 8, ECF No. 5-2); and Torres seeks to enforce a verbal agreement  
2 that requires E-Land to purchase the Tenorio property under his name in fee simple, which  
3 implicates Section III(A) of the Agreement wherein Suwaso was to lease the land for 55 years.  
4 The Agreement's arbitration clause encompasses this claim because Torres was an agent of  
5 Fumoto, who is a signatory to the Agreement, and the arbitration clause states that "the Parties  
6 agree[d] that *any claim or dispute* between them or against *any agent . . . , whether related to this*  
7 *Agreement* or otherwise . . . shall be resolved by binding arbitration[.]" (Notice of Removal ¶ 64;  
8 Agreement § X.I, ECF No. 5-3 (emphasis added).) Defendants further argue that the Agreement  
9 may also provide substantive defenses to Torres's claims. (See Notice of Removal ¶¶ 75, 78;  
10 Agreement § X.K (integration clause); Agreement § X.C (limitation on amendments).) Based on  
11 these assertions, Defendants have established that the Agreement could "conceivably affect the  
12 outcome" of Torres's first cause of action. The Court therefore finds that the Agreement "relates  
13 to" Torres's suit as to the first cause of action such that this Court has removal jurisdiction pursuant  
14 to 9 U.S.C. § 205.

### 18 3. Subject Matter Jurisdiction over Torres's Claims

19 The Court, having established that it has proper removal jurisdiction, must next determine  
20 whether it has subject matter jurisdiction to hear the case. *Infutura*, 631 F.3d at 1135 n.1 ("a  
21 federal court must have both removal and subject matter jurisdiction to hear a case removed from  
22 state court"). The FAA provides that "[a]n action or proceeding falling under the Convention shall  
23 be deemed to arise under the laws and treaties of the United States. The district courts of the United  
24 States . . . shall have original jurisdiction over such an action or proceeding, regardless of the  
25 amount in controversy." 9 U.S.C. § 203. Section 202 of the FAA states the following:

27 An arbitration agreement or arbitral award arising out of a legal relationship,  
28 whether contractual or not, which is considered as commercial, including a

1 transaction, contract, or agreement described in section 2 of this title, falls under  
2 the Convention. An agreement or award arising out of such a relationship which is  
3 entirely between citizens of the United States shall be deemed not to fall under the  
4 Convention unless that relationship involves property located abroad, envisages  
5 performance or enforcement abroad, or has some other reasonable relation with one  
6 or more foreign states. For purposes of this section a corporation is a citizen of the  
7 United States if it is incorporated or has its principal place of business in the United  
8 States.

9 9 U.S.C. § 202.

10 Defendants assert that the Agreement “falls under” the Convention because it “effectuates  
11 a commercial transaction—the sale of stock—that is not entirely between citizens of the United  
12 States.” (Notice of Removal ¶ 46.) More specifically, the Purchase and Sale Agreement was  
13 executed between Fumoto, a Japanese citizen, and a Korean corporation (E-Land) acting through  
14 a CNMI corporation (MRI). (Notice of Removal ¶ 46.)

15 Torres contends, however, that the Agreement fails to “fall under” the Convention because  
16 he was not a signatory to the Agreement. (Memo Mot. to Remand 4.) Torres argues that since he  
17 did not sign the Agreement, he is not a party and cannot be compelled to arbitrate. (Memo Mot. to  
18 Remand 5.) Torres further argues that the arbitration provision in the Agreement failed to provide  
19 for arbitration in a territory that is a signatory to the Convention. (Memo Mot. to Remand 5.) Torres  
20 states that the mere invocation of the American Arbitration Association is insufficient to fulfill the  
21 jurisdictional requirement that arbitration take place in a territory that is a signatory to the  
22 Convention. (Memo Mot. to Remand at 5–6.)

23 Torres’s arguments are based on *Ledee v. Ceramiche Ragno*, in which the First Circuit  
24 recognizes four prerequisites for an arbitration agreement to fall under the Convention, including  
25 whether the agreement provides for arbitration in the territory of a signatory of the Convention.  
26 684 F.2d 184, 186–87 (1st Cir. 1982). However, the *Ledee* prerequisites determine whether a court  
27 must order arbitration once it has asserted jurisdiction under Chapter 2 of the FAA and do not  
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1 address the issue of jurisdiction. *See also Freudensprung v. Offshoe Technical Services, Inc.*, 379  
2 F.3d 327, 339 (5th Cir. 2004) (citing *Ledee* for determining when a court should compel  
3 arbitration); *Smith/Enron Cogeneration Ltd. Partnership v. Smith Cogeneration Intern*, 198 F.3d  
4 88, 92 (2d Cir. 1999) (citing to *Ledee* for the proposition that a district court has a limited scope  
5 of inquiry in considering a petition to compel arbitration under Chapter 2 of the FAA); *Standard*  
6 *Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 449 (3d Cir. 2003) (citing *Ledee*).

8         The Ninth Circuit has not adopted any of the four *Ledee* prerequisites to establish  
9 jurisdiction. In fact, the Ninth Circuit has cautioned district courts against adding jurisdictional  
10 requirements not expressed in Chapter 2 of the FAA. *See Infuturia*, 631 F.3d at 1138 (finding that  
11 a district court exceeded the jurisdictional scope of § 205 by adding privity of contract to the  
12 prerequisites for removal jurisdiction without a statutory basis). In *AtGames Holdings Ltd. v.*  
13 *Radica Games, Ltd.*, for example, the district court held that a state court action is only removable  
14 “if (1) the parties to the action have entered into an arbitration agreement, and (2) the action relates  
15 to that agreement.” 394 F. Supp. 2d 1252, 1255 (C.D. Cal. Oct. 7, 2005). The holding in *AtGames*  
16 grounded jurisdiction on the relatedness of the parties even though Section 205 only focused on  
17 the relatedness of the “*subject matter* of [the] action . . . to an arbitration agreement.” *Infuturia*,  
18 631 F.3d at 1138. The Ninth Circuit was not persuaded by the holding in *AtGames* and declined to  
19 add any prerequisites to removal jurisdiction if not stated in Chapter 2. *Id.* at 1139.

22         The requirements for arbitration under the Convention are not to be construed as federal  
23 jurisdictional requirements; only Chapter 2 of the FAA creates federal jurisdiction in this matter.  
24 Title 9 U.S.C. § 201 provides that the Convention “shall be enforced in the United States courts *in*  
25 *accordance with this chapter*” (emphasis added). Chapter 2 of the FAA does not incorporate the  
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1 Convention, but rather establishes an enforcement mechanism for it. District courts have original  
2 jurisdiction over actions or proceedings “falling under” the Convention. 9 U.S.C. § 203.

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4 The Court need only look at Section 202 under Chapter 2 of the FAA to determine whether  
5 an agreement “falls under” the Convention and Section 203 to assert subject matter jurisdiction  
6 thereafter. Here, the Agreement “falls under” the Convention because it involves a commercial  
7 transaction, namely a Purchase and Sale Agreement of Suwaso stock, executed between a Japanese  
8 citizen and a Korean corporation (E-Land) acting through a CNMI corporation (MRI). This Court  
9 concludes that the Defendants have met their burden to establish subject matter jurisdiction. For  
10 these reasons, the Court rejects Torres’s arguments and finds that it has subject matter jurisdiction.

#### 11 12 B. Motion to Remand

13 Having established that it has both removal and subject matter jurisdiction to hear the case,  
14 the Court now addresses the merits of Torres’s motion to remand. In its discussion of the propriety  
15 of Defendants’ removal, the Court concluded that the Agreement could “conceivably affect the  
16 outcome” of Torres’s case such that it “relates to” Torres’s suit. The Court has further determined  
17 that the Agreement “falls under” the Convention pursuant to §§ 202–203 under Chapter 2 of the  
18 FAA. This Court therefore has subject matter jurisdiction over this suit.

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20 However, courts may elect not to exercise jurisdiction when the federal claim that forms  
21 the basis of federal jurisdiction is eliminated. *See Carnegie-Mellon University v. Cohill*, 484 U.S.  
22 343, 351 (1988) (“when the single federal-law claim in the action was eliminated at an early stage  
23 of litigation, the District Court had a powerful reason to choose not to continue to exercise  
24 jurisdiction”). In this case, the Court orally granted Defendants’ motion to compel arbitration as  
25 to the first cause of action regarding fraudulent misrepresentation (Minute Entry, ECF No. 16.)  
26 Having granted the motion to compel arbitration as to the first cause of action, the court will  
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1 dismiss that cause of action and retain jurisdiction to enforce any arbitration judgment. Having  
2 then dismissed the claim over which it had original jurisdiction, the Court now considers whether  
3 to exercise jurisdiction over the remaining claims.  
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5 The only claims remaining are the state-law claims. These claims—accounting, fraudulent  
6 concealment and usurpation of corporate opportunity, breach of fiduciary duty, and assisting a  
7 breach of fiduciary duty—while part of Torres’s suit, stand independent of the Agreement. It is  
8 only Torres’s first claim that depended on and related to the Agreement, as the Agreement provided  
9 the basis for Defendants’ making alleged fraudulent misrepresentations to Torres. (Compl. ¶¶ 45–  
10 54.) The remaining claims are not related to the Agreement under Torres’s role as Fumoto’s agent.  
11 Those claims assert violations of CNMI state law (4 CMC §§ 4681–83), the Suwaso bylaws, and  
12 breach of corporate fiduciary duties under Torres’s role as a minority shareholder of Suwaso.  
13 (Compl. ¶¶ 61, 70, 84–85, 94.) Torres does not seek to enforce the Agreement through these claims  
14 but rather bases the claims on other communications, acts, and omissions by Defendants which  
15 affected him in his capacity as a minority shareholder. None of the state-law claims hinges on the  
16 Agreement or is so closely tied to the first cause of action such that jurisdiction must remain with  
17 this Court.  
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20 In instances where a suit is properly removed and the plaintiff decides to abandon his  
21 federal claim, the district court has the power to remand the case. *See Carnegie-Mellon*, 484 U.S.  
22 at 351. The pendent jurisdiction doctrine is crafted “to enable courts to handle cases involving  
23 state-law claims in the way that will best accommodate the values of economy, convenience,  
24 fairness, and comity[.]” *Id.* at 352. The district court can “decline to assert supplemental  
25 jurisdiction” over a pendant claim if: (1) the claim raises a novel or complex issue of State law;  
26 (2) the claim substantially predominates over the claim or claims over which the district court has  
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1 original jurisdiction, (3) the district court has dismissed all claims over which it has original  
2 jurisdiction; or (4) in exceptional circumstances, there are other compelling reasons for declining  
3 jurisdiction. 28 U.S.C. § 1367(c). When all federal claims are eliminated before trial, “the balance  
4 of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law  
5 claims.” *Acri v. Varian Associates*, 114 F.3d 999, 1001 (9th Cir. 1997) (quoting *Carnegie-Mellon*,  
6 484 U.S. at 350 n.7) (omission in original).

8 Here, Torres voluntarily agreed at the hearing to arbitrate the first cause of action,  
9 fraudulent misrepresentation. (Minute Entry, ECF No. 16.) It is the only cause of action that  
10 provided the basis for subject matter jurisdiction, as it was entirely based on oral representations  
11 made to Torres during negotiations concerning the Agreement between Fumoto and MRI. (Compl.  
12 ¶¶ 45–54.) The remaining four causes of action are state-law claims entirely separate from the  
13 Agreement; they therefore provide the Court with no independent basis for federal jurisdiction.  
14 The state-law claims substantially predominate over the first claim in “the scope of the issues  
15 raised” and “the comprehensiveness of the remedy sought[.]” *United Mine Workers v. Gibbs*, 383  
16 U.S. 715, 726 (1966).

19 In determining whether to exercise supplemental jurisdiction, the district court considers  
20 “the principles of economy, convenience, fairness, and comity which underlie the pendent  
21 jurisdiction doctrine.” *Carnegie-Mellon*, 484 U.S. at 357. As to judicial economy, the Court has  
22 not made any rulings on substantive motions nor expended substantial effort in this case. The only  
23 pending motions are the initial procedural issues. As to convenience and fairness, both the state  
24 and federal forum are equally convenient to the parties as they are both located in the CNMI.  
25 Defendants have not otherwise shown that this Court would provide a fairer forum than the state  
26 forum. With respect to comity, because CNMI state law will apply to the remaining claims, the  
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1 Commonwealth Superior Court would be better suited to handle the case. None of these factors  
2 weigh heavily in favor of retaining supplemental jurisdiction over the remaining state-law claims.  
3 *See SFA Group, LLC v. Certain Underwriters at Lloyd's, London et al.*, 2016 WL 5842180, at \*5  
4 \*6 (C.D. Cal. Sept. 29, 2016) (remanding supplemental claims following dismissal of claims over  
5 which it had original jurisdiction under the FAA since the supplemental claims provided no  
6 independent basis for jurisdiction over Defendants). The Court therefore declines to exercise  
7 supplemental jurisdiction over the remaining claims and grants the motion to remand as to these  
8 claims.  
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11 1. Award of Attorney Fees

12 Defendants argue that even if this Court grants the motion to remand, attorney fees should  
13 not be awarded to Torres. (Opp'n to Mot. to Remand 24.) Section 1447(c) provides that a remand  
14 order may require payment of attorney's fees. 28 U.S.C. § 1447(c) ("An order remanding the case  
15 may require payment of just costs and any actual expenses, including attorney fees, incurred as a  
16 result of the removal.") The statute does not require a grant of attorneys' fees on remand as a matter  
17 of course. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136 (2005). Section 1447(c) only  
18 authorizes courts to award costs and fees "when such award is just." *Id.* at 138. Absent unusual  
19 circumstances, courts may award fees and costs "only where the removing party lacked an  
20 objectively reasonable basis for seeking removal." *Id.* at 141.  
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22 Here, the Court agrees with Defendants that an award of costs and fees to Torres is not  
23 warranted. It was objectively reasonable for Defendants to assert that removal would be proper  
24 because one of Torres's claims is directly related to the Agreement over which this Court has  
25 jurisdiction. Moreover, the Court's determination of having both removal and initial subject matter  
26 jurisdiction over the case disfavors awarding costs and fees, and no unusual circumstances exist.  
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1 On balance, this Court grants Torres's motion to remand the remaining claims but denies his  
2 request for attorney fees.

3 C. Motion to Dismiss

4 Defendants' legal basis for their motion to dismiss is that since an arbitration clause is  
5 effectively a forum selection clause, dismissal under FRCP 12(b)(3) is proper. (Mot. to Compel  
6 Arb. and Dismiss 3.) Thus, to the extent that Plaintiff's claims must be arbitrated, nothing will  
7 remain for the Court to adjudicate and the Court should dismiss them. (*Id.*) If the Court were to  
8 find, however, that any claims fall outside the Agreement's arbitration provision, Defendants argue  
9 that it should stay those claims "as a matter of its discretion to control its docket." (Mot. to Compel  
10 Arb. and Dismiss 20; *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20  
11 n.23 (1983).) Torres asks that the Court deny the motion to compel arbitration and dismiss for all  
12 the same reasons articulated in his motion to remand. In particular, Torres argues that he was not  
13 a signatory to the Agreement, the arbitration clause does not encompass any of his claims, he was  
14 not acting on Fumoto's behalf to vindicate Fumoto's interest, he was not a third-party beneficiary  
15 of the Agreement, and he cannot be forced to arbitrate based on equitable estoppel. (Opp'n to Mot.  
16 to Compel 3.)

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18 In declining to exercise supplemental jurisdiction over the remaining state law claims, this  
19 Court has already articulated reasons to justify remand of the remaining state law claims. The  
20 Court has only ruled on initial procedural motions, Defendants have not otherwise shown that this  
21 Court would provide a fairer forum than the state forum, and the state court would be better suited  
22 to adjudicate state law claims. The Court does not find the remaining state law claims  
23 interdependent with the fraudulent misrepresentation claim so as to justify a stay. In this case, the  
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1 state law claims do not hinge on the Agreement and can be independently asserted by Torres as a  
2 minority shareholder of Suwaso. As such, the Court denies Defendants' motion to dismiss.

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4 **V. CONCLUSION**

5 For the foregoing reasons, Torres's Motion to Remand (ECF No. 8) as to the remaining  
6 four claims is GRANTED, and the action is remanded to the Commonwealth Superior Court.  
7 Defendants' Motion to Compel Arbitration and Motion to Dismiss, or, Alternatively, Stay Action  
8 (ECF No. 5) as to the second through fifth causes of action is DENIED.

9 Having granted Defendants' Motion to Compel Arbitration as to the First Cause of Action,  
10 the Court will dismiss the first cause of action and retain jurisdiction to enforce any arbitration  
11 judgment.  
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13 SO ORDERED: April 20, 2017

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17 RAMONA V. MANGLONA  
18 Chief Judge  
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