UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV15-08048 JAK (RAOx)	Date	July 29, 2016
Title	Tradeline Enterprises Pvt. Ltd. v. Jess Smith & Sons Cotton, LLC, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE**

DEFENDANT J.G. BOSWELL COMPANY'S MOTION FOR STAY PENDING ARBITRATION OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT (DKT. 16)

DEFENDANT JESS SMITH & SONS COTTON, LLC'S MOTION TO COMPEL ARBITRATION AND OR STAY LITIGATION (DKT. 18)

DEFENDANT JESS SMITH & SONS COTTON, LLC'S MOTION TO DISMISS PURSUANT TO 12(B)(7) (DKT. 19)

DEFENDANT JESS SMITH & SONS COTTON, LLC'S MOTION TO DISMISS PURSUANT TO 12(B)(6) (DKT. 21)
JS-6: Stayed/Inactive Calendar

I. Introduction

Tradeline Enterprises PVT. LTD. ("Plaintiff" or "Tradeline") brought this action against Jess Smith & Sons Cotton, LLC ("Jess Smith Cotton") and J.G. Boswell Company ("Boswell") (collectively, "Defendants"). The Complaint alleges that Defendants violated the Sherman Act, 15 U.S.C. §§ 1, 15, by conspiring with non-party, Supima Association of America ("Supima Association"), to cause Tradeline to lose its license with Supima Association. Complaint, Dkt. 1. The license had permitted Tradeline to sell Supima® branded yarn. *Id.*

Four motions have been filed by the parties: (i) by Boswell to stay this action pending the conclusion of a parallel arbitration proceeding, or, in the alternative, to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) ("Boswell Motion") (Dkt. 16); (ii) by Jess Smith Cotton to compel arbitration and dismiss or stay litigation ("Cotton Motion to Compel Arbitration") (Dkt. 18); (iii) by Jess Smith Cotton to dismiss pursuant to Fed. R. Civ. P. 12(b)(7) ("Cotton 12(b)(7) Motion") (Dkt. 19); and (iv) by Jess Smith Cotton to dismiss

pursuant to Fed. R. Civ. P. 12(b)(6) ("Cotton 12(b)(6) Motion") (Dkt. 21) (collectively, the "Motions"). Plaintiff filed a separate opposition to each of the Motions. *See* Dkt. 29, 30, 31, 48-1.

A hearing on the Motions was held on April 4, 2016. Dkt. 52.[1] For the reasons stated in this Order, the Boswell Motion and the Cotton Motion to Compel Arbitration are **GRANTED**. Tradeline must arbitrate its claim against Defendants. The action is stayed pending the conclusion of the arbitration and any subsequent proceedings in this action with respect to whether the award should be confirmed or set aside. In light of these rulings, the Cotton 12(b)(7) Motion and the Cotton 12(b)(6) Motion are **MOOT**.

II. Allegations in the Complaint

A. The Licensing Agreement Between Tradeline and Supima Association

Tradeline is a company based in India. Prashant Palayam ("Palayam") is its principal. In the lexicon used in the cotton industry, Tradeline is called a "spinner." Dkt. 1 ¶ 3. A spinner manufactures yarn using cotton fiber. *Id.*

The Supima® trademark is owned by the Supima Association, an organization whose members are cotton growers and cotton merchants. *Id.* The Association collects dues from its members and licenses its trademark to spinners, textile mills, manufacturers and retailers. *Id.* ¶ 4. These agreements permit licensees to brand products using the Supima® trademark. This branding is designed to show that these products are made with 100 percent America Pima cotton. *Id.* The goal of the Supima Association is to "brand America Pima cotton as the world premier cotton." *Id.*

The board of directors of the Supima Association is comprised of 11 producers of American Pima cotton. Of these, seven are located in California, two in Texas, and one in each of Arizona and New Mexico. *Id.* ¶ 27. The President of the Supima Association is Jesse Curlee ("Curlee"), and its Executive Vice President is Marc Lewkowitz ("Lewkowitz"). *Id.* ¶ 65.

In 2008, Tradeline entered a license agreement with Supima Association ("Supima Licensing Agreement"). *Id.* ¶ 32. This license permitted Tradeline to brand certain of its products with the Supima® trademark. *Id.* ¶ 33. The Supima Licensing Agreement was effective from January 1, 2008 to December 31, 2009, and could be renewed by "mutual agreement" of the parties "unless terminated by operation of law or under Section 2 and 3 of this Article VIII." Dkt. 22 (Ex. A at 7). Section 2 of Article VIII set forth the terms pursuant to which Tradeline could terminate the Supima Licensing Agreement. *Id.* Section 3 of Article VIII set forth the grounds and manner in which the Supima Association could terminate the Agreement. *Id.* at 8. It provides, *inter alia*, that the Supima Association could do so if Tradeline were "included on either the ACEA (American Cotton Exporters' Association) or the LCA (Liverpool Cotton

[1] At the hearing, the parties were directed to submit supplemental briefing about certain cases identified by the Court with respect to whether the claims presented by Tradeline are subject to arbitration. Those supplemental briefs were timely submitted (Dkt. 53, 54 56) and the Motions were taken under submission.

Association) default list(s)." *Id.*[2] However, the licensee would be granted "45 days from date of inclusion on either default list to resolve dispute and be removed from said list before Supima terminates the license." *Id.*

Article XI of the Supima Licensing Agreement addresses arbitration. It provides:

> In the event of any dispute arising from this Agreement the parties agree that the matter be referred to an arbiter approved by both parties for his opinion, and in the event of the arbiter of the opinion not being acceptable to both parties, the matter shall be referred to the American Arbitration Association's branch in Arizona for decision and they will apply the Law of the State of Arizona.

Id. at 9.

The Complaint alleges that, at the conclusion of the initial two-year period provided in the Supima Licensing Agreement, the parties entered an addendum in which they agreed to extend it for an additional year, *i.e*., through December 31, 2010. Dkt. 1 ¶ 118. Tradeline alleges that the next year the parties entered a parallel addendum in which they extended the Agreement through December 31, 2011. *Id.* ¶¶ 118-19. The Complaint then alleges that, in January 2012, the Supima Association agreed to another one-year renewal of the license to Tradeline, but subject to conditions not included in the original Supima Licensing Agreement. *Id.* ¶ 121. Lewkowitz allegedly stated these conditions in an email that he sent that is dated January 24, 2012:

> We have accepted your renewal documents today and approved Tradeline for Supima license for 2012. However we do this with the following notices and conditions. Supima has received a number of complaints from various mills that we are sure you are aware of with regards to the yarn not complying with the contracted terms that they had with Tradeline. In multiple instances, the yarn has been submitted for DNA testing and the results have comeback [sic] noting that the yarn is a blend not 100% Supima as is required. Tradeline will need to replace the non-compliant yarns per the contract specifications and will need to guarantee that future shipments of Supima labeled yarns be made with 100% Supima cotton as required by the Supima agreement. Additionally, we are aware that Tradeline is behind on a number of contracted fiber purchases, and these contracts must be honored and completed. If the merchants are not satisfied with Tradeline's performance on the remaining open contracted volumes, they have the option of taking Tradeline to arbitration. If Tradeline is found in violation of contract terms and is placed on the default list under ICA and ACSA rules, then the Supima license will immediately become null and void and Tradeline will need to cease and desist from using the Supima name, logo, and trademark in any manner of its business.

Dkt. 22 (Ex. C at 2).

[2] These organizations maintain lists of cotton buyers who have defaulted on certain contractual obligations.

The Complaint alleges that this email constituted a proposed, unilateral change to the original Supima Licensing Agreement. Dkt. 1 ¶ 123. It then alleges that, because Tradeline did not accept this change, it did not become effective. *Id.*

B. Tradeline's Contracts with Jess Smith Cotton

Jess Smith Cotton is a merchant located in Bakersfield, California. Dkt. 1 ¶ 3. As a merchant, it buys cotton from growers, which is resells to spinners. *Id.* The spinners then convert the cotton into yarn. *Id.* Jess Smith Cotton is not a member of the Supima Association. Schroeder Decl., Dkt. 18 (Ex. 2 ¶ 37).

Jess Smith Cotton and Tradeline began doing business in 2009. Schroeder Decl., Dkt. 18 (Ex. 2 ¶ 4). From 2009 through 2011, they entered 12 contracts involving the sale of cotton (collectively, the "Jess Smith Cotton Contracts"). *Id.* Some, but not all, of the contracts involved American Pima cotton. *Id.* Each included an arbitration clause. These clauses are substantially similar. *See, e.g.*, Dkt. 19 (Ex. A, B). Each provides: "SELLER'S OPTION TO SELECT ICA OR ACSA ARBITRATION IN CASE OF ANY DISPUTE." *Id.*

Starting in April 2011,Tradeline became late in making payments due under certain of the Jess Smith Cotton Contracts. Because the late payment issues continued, on February 14, 2012, Jess Smith Cotton filed "default papers" with the ACEA. Dkt. 1 ¶ 125. As noted, the ACEA maintains a list of cotton buyers who allegedly have defaulted on certain contractual obligations. On February 29, 2012, the ACEA placed Tradeline on its list. *Id.* ¶ 128.

Pursuant to the arbitration provisions of the Jess Smith Cotton Contracts, in July 2012 Jess Smith Cotton initiated ICA arbitration proceedings. Schroeder Decl., Dkt. 18-2 ¶ 32. Ultimately, the arbitrators issued two rulings. Collectively, they awarded approximately $6.7 million to Jess Smith Cotton. *Id.* ¶ 34; *see also id.* (Ex. M, N).

C. The Alleged Conspiracy

1. <u>In General</u>

The Complaint alleges that the Supima Association, Boswell and Jess Smith Cotton "agreed that they would act in concert and did act in concert to deprive Tradeline of important procedural protections it should have enjoyed with respect to its [Supima] License Agreement with the [Supima] Association, to disparage Tradeline's products, and to strip Tradeline of its license with the [Supima] Association." Dkt. 1 ¶ 172. The Complaint also alleges that the Supima Association, which is not named as a party, was a "principal actor" in the conspiracy. *Id.* ¶ 27.

The Complaint alleges that, during the relevant time period, Jeff Elder ("Elder"), who served as the Head of Marketing for Boswell, was also Chairman of the Supima Association Board of Directors. It also alleges that, during the relevant time period, Jim Neufeld ("Neufeld), who was a member of the Board of Directors of Jess Smith Cotton, was also a member of the Board of Directors of Supima Association.

As discussed in more detail below, the Complaint alleges that Elder and Neufeld took "active steps in furtherance of the conspiracy, Elder for the benefit of Boswell and Neufeld for the benefit of Jess Smith Cotton." Dkt. 1 ¶ 29. Both allegedly "manipulated the [Supima] Association to further their respective companies' desires to avoid competition, and they did so with the active agreement and participation of the Association itself." *Id.*

The Complaint alleges that the Supima Association is not controlled by its employees, including Curlee and Lewkowitz. *Id.* ¶ 149. Instead, it is allegedly controlled "by its Board, its cotton grower members and its cotton merchant members." *Id.* The Supima Association, "controlled by Jess Smith Cotton and Boswell Co., had an economic incentive to conspire to the same extent as Defendants Jess Smith Cotton and Boswell Co. had an incentive to conspire." *Id.*

2. Palayam's Thesis

In August 2010, Palayam arranged a meeting with Elder. *Id.* ¶ 37. During this meeting, Palayam described his thesis about Supima Cotton ("Thesis"), which he later set forth in an email to Elder. *Id.* ¶ 39. The Thesis called for Tradeline to enter into direct contracts with small farmers, thereby "eliminating cotton merchant middlemen like Jess Smith Cotton." *Id.* ¶ 40. The Complaint alleges:

> As a buyer of Supima cotton from India, Tradeline did not have access to small Supima cotton farms. One role of the [Supima] Association is to connect the growers with the buyers, as both must be Supima® licensees. Tradeline correctly understood any effort to contact Supima cotton growers directly, without the assistance and approval of the [Supima] Association, would likely have been unsuccessful and would have risked alienating the [Supima] Association as well.

Id. ¶ 41.

The Complaint also alleges that the Thesis

> posed a direct threat to the cotton merchant members in the [Supima] Association, as well as to Defendant Boswell Co., which also acted as a merchant and controlled certain small farms, and which risked suffering significant price deterioration as the largest grower of Supima cotton if Tradeline's Thesis and business plan succeeded.

Id. ¶ 42.

Later in August 2010, Palayam sent an email to Lewkowitz in which he proposed that the Supima Association assist Tradeline in "'tieing [sic] up with the farms directly for buying [Supima cotton] fiber.'" *Id.* ¶ 43. The email explained that the proposal would benefit the Supima Association and its members by broadening the scope and depth of the penetration of lucrative Asian markets with Supima® cotton. *Id.*

The Complaint alleges that Elder and Lewkowitz

> understood that Tradeline's Thesis and business plan posed a threat to the cotton merchant

> members of the Association and to Boswell Co. itself. Both disregarded the fact that the Thesis was intended to and in fact would have furthered the only legitimate goal of the Association -- broadening and deepening the market demand for Supima cotton.

Id. ¶ 44.

Accordingly, they allegedly agreed that Lewkowitz "and others at the [Supima] Association" would "monitor Tradeline's activity in the marketplace and that the Association would take action to intervene if it appeared Tradeline was in a position to successfully execute on its business plan." *Id.* ¶ 45.

The Complaint further alleges that the contracts entered by Tradeline and Jess Smith Cotton played a "significant role" in the development of the alleged conspiracy." *Id.* ¶ 49. Thus, Jess Smith Cotton allegedly "misused" the Supima Association by having it "threaten to revoke Tradeline's license to create leverage to force Tradeline to perform on the Jess Smith Cotton contracts at a time when Defendants' conspiracy had financially weakened Tradeline through disparagement of its products." *Id.*

The Complaint next alleges that, by April 2011, Tradeline was

> poised to enter into a contract to provide the world's largest consumer of Supima cotton products with 700 tons of Supima cotton yarn . . . and it was poised to potentially to [sic] enter into substantial contracts with three other large Asian apparel manufacturers. It also had a real and present potential to enter into a partnership with Mitsubishi, one of the largest corporations in the world, and/or Uniqlo, the world's largest retailer consumer of Supima cotton products.

Id. ¶ 66.

Elder, Curlee and Lewkowitz were aware of these developments. *Id.* ¶ 67. The Complaint alleges that if

> Tradeline were to have entered into the Mitsubishi/Uniqlo contracts, and potentially other contracts with other major Asian apparel manufacturers, as well as a long term relationship with Uniqlo and/or Mitsubishi Living, it would have been solidly positioned to execute on Palayam's Thesis and to vertically integrate the supply chain by dealing directly with cotton growers.

Id.

This allegedly motivated Boswell and the Supima Association to act on their plan to disparage Tradeline and terminate the Supima Licensing Agreement. *Id.*

3. Testing of Tradeline's Yarn

Fortiustex is a textile mill in Porto, Portugal. *Id.* ¶ 68. The Complaint alleges that it purchased Supima® cotton yard from Tradeline "on a number of occasions by the spring of 2011 without any problems with contract performance on either side." *Id.* In March 2011, however, "either on his own or at the urging of the conspirators," Andres Skovbon ("Skovbon") of Fortiustex sent Supima® cotton yarn received from Tradeline to Lewkowitz to test and confirm whether it was 100 percent Supima® cotton. *Id.* ¶ 69.

The Supima Association tested samples of the yarn and reported the results to Skovbon. *Id.* Of the seven samples tested, the Supima Association reported to Fortiustex that five conformed, one was a "blend," and one "d[id] not conform." *Id.* ¶ 70. Fortiustex subsequently sent a second batch of Tradeline yarn to the Supima Association for testing. *Id.* ¶ 71. The Supima Association reported to Fortiustex that all of the yarn tested was "not Supima." *Id.*

The Complaint alleges that the Supima Association's testing of the yarn "violated the letter and spirit" of the Supima Licensing Agreement, which

> had explicit and detailed protocols for the [Supima] Association to test whether Tradeline's yarn was 100 percent Supima cotton. These protocols ensured, among other things, that the [Supima] Association would know that what it was testing was Tradeline's yarn. These protocols also should have provided Tradeline an opportunity to show by its business records or otherwise that the input to the yarn was 100 percent Supima cotton.

Id. ¶¶ 72-73.

Skovbon subsequently claimed that it had incurred substantial losses as a result of the yarn that it had purchased from Tradeline. It then threatened to sue Tradeline to recover its losses. *Id.* ¶ 77. The Complaint alleges that Elder "likely" indicated "to Skovbon that the Association would be happy to assist him if he had any problems with Tradeline," and that this induced Skovbon to "manufacture a product problem with Tradeline." *Id.* ¶ 83. The Complaint also alleges that Lewkowitz "opportunistically seized the chance to assist Fortiustex in disparaging Tradeline's products and good name." *Id.*

4. Tradeline's Alleged Interference with Tradeline Business Opportunities

TIV is a textile merchant located in Israel. *Id.* ¶ 85. In March 2011, TIV and Tradeline were prepared to enter into a contract for the purchase and sale of a substantial amount of Supima cotton yarn. *Id.* ¶ 86. During the negotiations, TIV sought permission from Tradeline to hire local Indian contractors to inspect Tradeline's spinning facility. *Id.* ¶ 86. Tradeline refused this request because its production methods are confidential and proprietary. However, Tradeline encouraged TIV to contact the Supima Association to confirm that Tradeline was a bona fide Supima® licensee. *Id.* ¶ 87. As a result, TIV did so. *Id.* ¶ 88. Curlee then responded to TIV by stating:

> There is one small problem and it is your supplier . . . Tradeline. We have received reports recently from several knitters/weavers who have questioned Supima yarn supplied by Tradeline in regard to it actually being Supima cotton. In at least one instance we tested the cotton and it appears not to be Supima cotton. This is a serious violation of a Supima spinner licensee and we are in the process of taking action against Tradeline.

Id. ¶ 89.

Thereafter, TIV withdrew from the negotiations with Tradeline, which suffered resulting financial and reputational harm. *Id.* ¶¶ 90, 95.

Soon thereafter, other companies withdrew from active negotiations with Tradeline as to the purchase of Supima cotton yarn. They included Uniqlo and Mitsubishi Living. *Id.* ¶¶ 96-100. The Complaint alleges that these potential buyers took this action after each reviewed an email from the Supima Association. It stated that Tradeline had been shipping adulterated Supima® cotton yarn and that the Supima Association planned to revoke its license agreement with Tradeline. *Id.* ¶ 98.

The Complaint next alleges that, as a result of the disparagement of Tradeline by the Supima Association, Tradeline lost business and the associated revenue. Consequently, it could not fully perform under the terms of the Jess Smith Cotton Contracts. *Id.* ¶¶ 101-17.

D. The Supima Association Revokes the Supima Licensing Agreement

On March 1, 2012, which was one day after ACEA placed Tradeline on its default list, the Supima Association "revoked" the Supima Licensing Agreement. *Id.* ¶ 129. The Association then informed Tradeline's three largest customers that it had done so. *Id.*. As a result, Tradeline's Supima cotton business collapsed. *Id.*

The Complaint alleges that the revocation was in violation of the original version of the Supima Licensing Agreement. *Id.* ¶¶ 122, 130. That Agreement provided that, upon receiving notice of any claimed breach of the Agreement, Tradeline would have 45 days to cure such an alleged deficiency before the Agreement could be revoked *Id.* ¶ 122. However, as noted above, the Complaint alleges that Lewkowitz unilaterally and without authority, included a new provision in the Supima Licensing Agreement that was entered in 2008. That term provided that the placement of Tradeline on the ACEA default list would result in an immediate termination of the Supima Licensing Agreement. *Id.*

III. Analysis

A. The Sherman Act Claim

As noted, the Complaint presents a single cause of action -- conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. §§ 1, 15. Section 1 prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States." *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006) (quoting 15 U.S.C. § 1). The Complaint alleges that the Defendants and the Supima Association, "agreed that they would act in concert and did act in concert to deprive Tradeline of important procedural protections it should have enjoyed with respect to its License Agreement with the Association, to disparage Tradeline's products, and to strip Tradeline of its license with the Association." Dkt. 1 ¶ 172.

B. The Boswell Motion and the Cotton Motion to Compel Arbitration

1. Background

Jess Smith Cotton and Boswell argue that Tradeline is required to arbitrate its claim pursuant to the terms of the Supima Licensing Agreement.[3] The first issue is whether Defendants, who are non-signatories of the Supima Licensing Agreement, have standing to enforce its arbitration provision against Plaintiff. All parties agree that this question is governed by Arizona law. *See Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128 (9th Cir. 2013) ("[A] litigant who is not a party to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract law allows the litigant to enforce the agreement."). The Supima Licensing Agreement contains a choice of law provision. It requires the application of Arizona law. See Dkt. 22 (Ex. A at 9) ("In the event of any dispute arising from this Agreement the parties agree that the matter be referred to an arbiter . . . and they will apply the Law of the State of Arizona.").

2. Arizona Law

Under Arizona law, a defendant who is not a signatory to an agreement providing for arbitration may move to compel arbitration under certain circumstances. Thus, where the plaintiff who has brought claims is a signatory to such an agreement, the defendant may move to compel their arbitration based on equitable estoppel.[4] *See Sun Valley Ranch 308 Ltd. P'ship ex rel. Englewood Properties, Inc. v. Robson*, 231 Ariz. 287, 296-97 (Ariz. Ct. App. 2012); *Carey v. K & M Seafood Fin*., *LLC*, 2014 WL 6778859, at *5 (Ariz. Ct. App. Dec. 2, 2014). This theory "'takes into consideration the relationships of persons, wrongs, and issues.'" *Sun Valley*, 231 Ariz. at 296 (quoting *Merrill Lynch Inv. Managers v. Optibase*, *Ltd*., 337 F.3d 125, 131 (2d Cir. 2003)).

The Arizona Court of Appeal addressed this doctrine in *Sun Valley*. There, the plaintiffs and certain corporate entities previously had entered a partnership agreement that included an arbitration provision. *Id.* at 290. The plaintiffs brought a civil action against certain of those corporate entities and Steven Robson ("Robson"). *Id.* Robson was not a party to the partnership agreement and did not sign it. However, he served as the president of certain of the corporations that were parties and signatories. *Sun Valley* concluded that Robson could compel arbitration under the following legal standard:

> "A nonsignatory can enforce an arbitration clause against a signatory to the agreement in several circumstances. One is when the relationship between the signatory and nonsignatory defendants is sufficiently close that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided. Another is when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting [its] claims against the nonsignatory. When each of a signatory's claims against a nonsignatory makes reference to or presumes the existence of the written

[3] Jess Smith also argues that Tradeline is required to arbitrate its claims against Jess Smith Cotton pursuant to the Jess Smith Cotton Contracts. Due to the determination made with respect to the terms of the Supima Licensing Agreement, this alternative theory is not addressed in this Order.

[4] Courts refer to this doctrine as both "equitable estoppel" and "alternative estoppel."

> agreement, the signatory's claims arise out of and relate directly to the written agreement, and arbitration is appropriate."

Id. at 296-97 (quoting *CD Partners, LLC v. Grizzle*, 424 F.3d 795, 798 (8th Cir. 2005)).

Sun Valley also cited *Amisil Holdings Ltd. v. Clarium Capital Mgmt*., 622 F. Supp. 2d 825, 830-31 (N.D. Cal. 2007) in support of the proposition that a non-signatory may compel arbitration based on a "'close relationship between the entities involved, as well as the relationship of the alleged wrongs to the nonsignatory's obligations and duties in the contract . . . and [the fact that] the claims were intimately founded in and intertwined with the underlying contract obligation.'" *Id.* at 297 (quoting *Amisil*, 622 F. Supp. 2d at 830-31) (alterations in original).

Sun Valley added that, "most courts to consider the issue have distinguished between non-signatories seeking to compel arbitration by signatories to an agreement with an arbitration clause and signatories attempting to compel non-signatories to arbitrate." *Id*. at 296 (citing *CD Partners, LLC v. Grizzle*, 424 F.3d 795, 799 (8th Cir. 2005) ("The test for determining whether a nonsignatory can force a signatory into arbitration is different from the test for determining whether a signatory can force a nonsignatory into arbitration . . . .") and *Amisil Holdings Ltd. v. Clarium Capital Mgmt*., 622 F. Supp. 2d 825, 830-31 (N.D. Cal. 2007) (courts are more likely to order arbitration demanded by a non-signatory when the resisting party is a signatory)).[5]

Sun Valley concluded that Robson could compel the arbitration of the claims brought by plaintiffs because "the trier of fact w[ould] be required to consider the Partnership Agreement and the Construction Agreement in resolving plaintiffs' claims, and Robson's conduct is intertwined with that of other defendants who signed the Partnership Agreement." *Id.*

3. Decisions by Circuit Courts

Decisions by courts outside of Arizona are also instructive as to the scope of the rule of estoppel. A theme common to them is that a party who is a signatory to a contract with an arbitration clause should be compelled to arbitrate claims against a non-signatory when those claims require an interpretation of the agreement that contains the arbitration provision. The underlying equitable principle is that a signatory should not be permitted to pursue benefits claimed pursuant to an agreement while disclaiming its arbitration provision. Three Circuit Court decisions address this issue. *American Bankers Insurance Group, Inc. v. Long*, 453 F.3d 623 (4th Cir. 2006), *PRM Energy Sys., Inc. v. Primenergy, L.L.C*., 592 F.3d 830, 833 (8th Cir. 2010) and *Wholesale Grocery Products Antitrust Litig.*, 707 F.3d 917 (8th Cir. 2013). All are consistent with *Sun Valley* as to the core legal standards.

[5] *American Bankers Insurance Group, Inc. v. Long*, 453 F.3d 623 (4th Cir. 2006), which is discussed *infra*, also considered this issue. Although it recognized that slightly different language had been used in prior Fourth Circuit cases depending on the status of the party whose estoppel was sought, *American Bankers* concluded that "any difference in the two tests is more semantic than substantive. Both tests examine whether the plaintiff has asserted claims in the underlying suit that, either literally or obliquely, assert a breach of duty created by the contract containing the arbitration clause." *Id.* at 629.

a. *American Bankers*

In *American Bankers*, the Longs brought a class action against American Bankers Insurance Group ("ABIG") and others alleging that ABIG "participated in a scheme to defraud investors through the sale of worthless securities." 453 F. 3d at 625. Specifically, the Longs alleged that Thaxton Life Partners ("TLP") sold automobile insurance policies to the public underwritten by ABIG, "and that because ABIG did not have enough funds to pay claims on the policies, it persuaded TLP to offer approximately $18 million of worthless promissory notes to the public to fund the insurance." *Id.* The Longs further alleged that, "[a]s part of [the] fraudulent scheme, ABIG, knowing that TLP would be unable to pay the promissory notes, structured them so that it (ABIG) was in the position of first priority in the event of a default." *Id.*

The Longs purchased a $75,000 promissory note from TLP. The note was "appended to" and its terms "'incorporated . . . by reference'" a subscription agreement. *Id.* The subscription agreement contained an arbitration clause providing "'that any dispute, controversy or claim arising out of or in connection with, or relating to, any subscription of the Note, or any breach or alleged breach hereof, including allegations of violations of federal or state securities law' shall be subject to arbitration." *Id.* Thus, the Longs and TLP were parties to an arbitration agreement, but ABIG was not.

The complaint brought by the Longs in a state court in South Carolina advanced 11 causes of action against ABIG, "arising out of its alleged participation in the fraudulent promissory note scheme . . . ." *Id.* The causes of action sought recovery due to: "(1) ABIG's alleged interference with TLP's obligations under the notes . . . ;(2) ABIG's alleged failure to disclose that TLP would be unable to pay the notes . . .;(3) ABIG's alleged conspiracy with, and control over, TLP in issuing the notes and in insuring that TLP did not make payments thereon . . .; (4) ABIG's allegedly unlawful retention of the proceeds from the notes . . . and (5) ABIG's alleged unfair trade practices regarding the notes . . . ." *Id.* at 625-26.

ABIG later filed a petition in the federal district court in South Carolina to compel arbitration of the claims under the subscription agreement. ABIG argued that it "was entitled to enforce the arbitration clause in the Subscription Agreement despite the fact that it was not a signatory thereto." *Id.* at 626. "In support of this contention, ABIG argued . . . that the Longs should be equitably estopped from arguing that it was not a signatory to the arbitration clause because each of the Long's individual causes of action . . . relied on the terms of the Note, which . . . was incorporated by reference into the Subscription Agreement . . . which contained the arbitration clause." *Id.* The district court denied the petition. It concluded that the Longs "were not equitably estopped from asserting that ABIG was not a signatory to the arbitration clause because their individual causes of action . . . were based on theories of liability other than the breach of obligations on the Note." *Id.*

The Fourth Circuit reversed. It restated the following test for the application of equitable estoppel against a signatory to an arbitration clause:

> "[E]quitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the . . . agreement in asserting its claims against the

> nonsignatory. When each of a signatory's claims against a nonsignatory makes reference to or presumes the existence of the written agreement, the signatory's claims arise out of and relate directly to the written agreement, and arbitration is appropriate."

Id. at 627 (quoting *Brantley v. Republic Mortgage Ins. Co.,* 424 F. 3d 392, 395-96 (4th Cir. 2005).

The Fourth Circuit explained that the legal principle that underlies this doctrine "'rests on a simple proposition: it is unfair for a party to rely on a contract when it works to its advantage, and repudiate it when it works to its disadvantage.'" *Id.* (quoting *Wachovia Bank, Nat. Ass'n v. Schmidt*, 445 F.3d 762, 769 (4th Cir. 2006)). Therefore, to be equitably estopped, "the signatory need not necessarily assert a cause of action against the nonsignatory for breach of the contract containing the arbitration clause. Instead, estoppel is appropriate if 'in substance [the signatory's underlying] complaint [is] based on the [nonsignatory's] alleged breach of the obligations and duties assigned to it in the agreement,' *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.*, 10 F. 3d 753,757 (11th Cir. 1993), 'regardless of the legal label assigned to the claim,' *JJ Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F. 2d 315, 319 (4th Cir 1988)." *Id.* at 628 (citations omitted). The Fourth Circuit also recognized that "a party 'may [not] use artful pleading to avoid arbitration.'" *Id.* (citation omitted).

Applying these standards, *American Bankers* held that the Longs were equitably estopped from arguing that ABIG was not a party to the arbitration clause. The basis for this conclusion was that each of their causes of action was dependent on the allegation that ABIG breached a duty created solely by the promissory note that the Longs had purchased *Id.* at 630. Without the alleged breach of the promissory note, "the Longs would have no cause to complain." *Id.* Moreover, although each of the Long's individual claims was "phrased in tort,"[6] they could not use "artful pleading to avoid arbitration" because at the root of their claims was an attempt to hold ABIG to the terms of the note*. Id.* (internal quotation marks omitted).

b. *PRM Energy*

Through a series of agreements, PRM Energy Systems, Inc. ("PRM") licensed Primenergy, L.L.C. ("Primenergy") to use PRM's patented technology and to enter sublicense agreements in several countries including the United States, but not Japan. *PRM Energy*, 592 F.3d at 832. However, Primenergy claimed that, the agreements gave it a right of first refusal for a license in Japan. The licensing agreements contained an arbitration provision.

In 2001, a U.S. subsidiary of Kobe Steel, which is a Japanese company, contacted PRM about licensing the technology in the United States. PRM referred the subsidiary to Primenergy. *Id.* In 2002, Kobe Steel began discussing licensing in Japan with PRM, but the discussions stalled because Kobe Steel would not sign a confidentiality agreement. *Id.* At the same time, Kobe Steel was allegedly negotiating with Primenergy, ultimately inducing Primenergy to breach its agreements with PRM by sublicensing the

[6] The Longs advanced claims for, *inter alia*, interference with contract, securities fraud, negligence, civil conspiracy, unjust enrichment and rescission. *Id.* at 630.

technology to Kobe Steel and planning joint projects in Japan. In 2003, Primenergy and Kobe Steel signed a collaboration agreement in violation of the territorial restrictions in the PRM-Primenergy agreements. Neither Primenergy nor Kobe Steel informed PRM about this agreement. *Id.*

Still unaware of the Primenergy-Kobe Steel agreement, PRM executed an option in which it granted to an unrelated company a license to use the technology in Japan. *Id.* In 2004, Primenergy filed a demand for arbitration in which it sought an order that PRM terminate the option. It argued that its right of first refusal barred this agreement. Primenergy also sought to invalidate certain royalty provisions on the ground that certain patents had expired. PRM advanced several cross-claims, including that Primenergy breached the parties' agreements by having its undisclosed dealings with Kobe Steel. In April 2005, the arbitrator ruled that the royalty provisions were unenforceable, and that both parties had breached certain obligations concerning the territory of Japan. The arbitrator enjoined Primenergy from any further discussions with Kobe Steel for a period of two years. *Id.* at 832-833.

Also in 2004, and while the arbitration was pending, PRM filed a complaint in a district court against Primenergy and its officers, alleging several causes of action, including breach of contract, conspiracy and tortious interference. *Id.* at 832. In March 2005, PRM brought a separate action against Kobe Steel asserting claims for tortious interference and conspiracy. *Id.* at 833. PRM amended the complaint against Primenergy making specific allegations as to the interactions between Primenergy and Kobe Steel. After the two actions were consolidated, the claims against Primenergy were dismissed on the ground that they were subject to arbitration. Thereafter, in an amended complaint against Kobe Steel, PRM alleged, *inter alia*, that through their concerted actions, Primenergy and Kobe Steel were attempting to negotiate lower royalty payments and broader territorial rights for the licensing of PRM's technology. Subsequently, in March 2006, the district court confirmed the April 2005 arbitration award. *Id.* In June 2006, the district court allowed Kobe Steel to compel arbitration of the claims by PRM. It concluded that it could do so on an estoppel theory because "'all of PRM's claims either make reference to or presume the existence of the [PRM-Primenergy agreements], and allege substantially interdependent and concerted misconduct by both the nonsignatory [Kobe Steel] and one or more of the signatories [Primenergy] to the contract.'" *Id.* at 833.

The Eighth Circuit affirmed. It explained that the doctrine of alternative estoppel doctrine may apply when a non-signatory to a contract with an arbitration clause seeks to compel the arbitration of claims brought by a signatory to the contract. It noted the general rule that requires "the claims being so intertwined with the agreement containing the arbitration clause that it would be unfair to allow the signatory to rely on the agreement in formulating its claims but to disavow availability of the arbitration clause of that same agreement." *Id.* at 835. It next discussed the theory of "concerted misconduct" as a basis for compelling arbitration as to claims brought against a non-signatory defendant. *Id.* Its application requires that, "at a minimum, 'the plaintiff must specifically allege coordinated behavior between a signatory and a nonsignatory.'" *Id.* (citation omitted). It added that the "'concerted-misconduct test requires allegations of pre-arranged, collusive behavior demonstrating that the claims are intimately founded in and intertwined with' the agreement at issue.'" *Id.* (internal citation and quotation marks omitted)). It also acknowledged the significance of allegations suggesting that the signatory and non-signatory "'knowingly acted in concert, improperly cooperated, or worked hand-in-hand.'" *Id.* (citation omitted.)

PRM Energy concluded that, as to PRM's claims against Kobe Steel, "the nature of the alleged misconduct and its connection to the contract demonstrates the requisite relationships between persons, wrongs, and issues necessary to compel arbitration." *Id.* at 836. First, PRM specifically alleged coordinated, collusive and interdependent conduct by Primenergy and Kobe Steel as to the PRM-Primenergy contracts. *Id.* This included the aforementioned failure to disclose their negotiations and agreement to PRM. Second, the PRM-Primenergy agreements anticipated that an entity such as Kobe Steel could enter into a sublicensing agreement with Primenergy, and that the terms of the sublicense would be limited by those of the PRM-Primenergy agreements. *Id. PRM Energy* noted that the facts showed that this was not a situation where the non-signatory, co-conspirator was a "complete stranger" to the agreement at issue. *Id.*

c. *Wholesale Grocery Products*

In *Wholesale Grocery*, five retail grocers ("Retailers") brought antitrust claims alleging a conspiracy between by two wholesaler grocers ("Wholesalers"). The basis for their claims was the allegation that the Wholesalers had entered an "Asset Exchange Agreement (AEA"), in which they exchanged certain business assets, including some customer contracts, and agreed not to do business with or solicit any of the exchanged customers for a certain time period." *Wholesale Grocery*, 707 F.3d at 920.

Each of the five plaintiffs had a contract with only one of the two defendants. None of the contracts included price terms. Instead, each provided that the Wholesaler would make products available for purchase by the Retailer, who would pay the prices stated in future sales documents. Each of those contracts included an arbitration clause. However, apparently mindful of those clauses, each Plaintiff asserted its claims only against the wholesaler with whom it had no contractual or business relationship. *Id.* at 919-20. Each of the Wholesalers sought to compel arbitration based on equitable estoppel as to the claims brought against it by the Retailers with whom it had no contractual relationship. The District Court granted the demand for arbitration applying equitable estoppel.

The Eighth Circuit reversed. Although it applied Minnesota law, it determined that law follows federal law as to estoppel. *Id.* at 922. *Wholesale Grocery* then discussed, and distinguished *PRM Energy.* It began with this summary of the holding in *PRM Energy*:

> We addressed the doctrine of equitable estoppel in *PRM Energy Systems.* In that case, we explained:
>
> > [Equitable] estoppel typically relies, at least in part, on the claims being so intertwined with the agreement containing the arbitration clause that it would be unfair to allow the signatory to rely on the agreement in formulating its claims but to disavow availability of the arbitration clause of that same agreement.

Id. at 922 (footnote omitted).

Wholesale Grocery explained that the claims of the Retailers against the non-signatory Wholesalers were

not "'so intertwined with the agreement containing the arbitration clause that it would be unfair to allow the signatory to rely on the agreement in formulating its claims but to disavow availability of the arbitration clause of that same agreement.'" *Id.* at 923 (quoting *PRM*, 592 F.3d at 835). Thus, the antitrust claims, unlike the claims in *PRM Energy*, did not arise from the terms of the contract which included the arbitration clause. In contrast, the antitrust claims "exist independent of the supply and arbitration agreements" and arise under the Sherman Act. 15 U.S.C. § 1 ("Every . . . conspiracy[] in restraint of trade or commerce among the several States . . . is declared to be illegal."). Further, the claims were premised on the Retailers' alleged payment of artificially inflated prices. But, none of the agreements between any of the Retailers and Wholesalers specified price terms. *Id.* The Eighth Circuit also explained that, unlike in *PRM Energy,* there was no showing that the contracts expressly anticipated that a signatory would enter an agreement with the nonsignatory who was seeking to compel arbitration.

4. Application

Sun Valley, *American Bankers*, *PRM* and *Wholesale Grocery* individually and collectively show that Tradeline must arbitrate its claims against Defendants. Although Arizona law controls on this issue, all of these decisions, which apply both state and federal law, are in harmony. Therefore, it is appropriate to consider all of them in determining and applying Arizona law. There are several bases for the conclusion that these decisions compel arbitration here.

First, Tradeline's claim plainly arises from, and is "so intertwined with" the Supima Licensing Agreement, that "it would be unfair to allow [Tradeline] to rely on the agreement in formulating its claims but to disavow availability of the arbitration clause of that same agreement." *PRM*, 592 F. 3d at 835. Tradeline is a party to the Supima Licensing Agreement and it contains the arbitration clause. The single cause of action advanced in the Complaint, which arises under Section 1 of the Sherman Act, alleges that Defendants, together with the Supima Association, "agreed that they would act in concert and did act in concert to deprive Tradeline of important procedural protections it should have enjoyed with respect to its License Agreement with the Association, to disparage Tradeline's products, and to strip Tradeline of its license with the Association." Dkt. 1 ¶ 172. Tradeline also contends that the Supima Licensing Agreement precluded the Supima Association from using the particular method selected to test the quality of the yarn produced by Tradeline. Dkt. 1 ¶¶ 68-84.

According to the allegations in the Complaint, the "procedural protections" provided to Tradeline by the Supima Licensing Agreement included that it would have 45 days to "cure" any alleged breach of that Agreement, including its placement on the ACEA default list. The Complaint alleges that Defendants conspired with the Supima Association to violate this right by summarily revoking Tradeline's license the day after Tradeline appeared on the ACEA default list. *Id.* ¶¶ 131, 135. Defendants contend that this provision was properly amended by Lewkowitz in a January 2012 email. It stated that placement on a default list would result in the immediate revocation of the Supima Licensing Agreement. Dkt. 22 (Ex. C at 2). Tradeline responds that the email constitutes a unilateral change to the original Supima Licensing Agreement that is ineffective given Tradeline's failure to accept it. Dkt. 1 ¶ 123. Issues of contractual interpretation of the Supima Licensing Agreement are plainly presented by this theory of liability.

Similarly, Tradeline's allegations that the Defendants conspired to "strip Tradeline of its license" and "to disparage" its products, which is tied directly to the termination decision, confirms that the resolution of Tradeline's antitrust claim will require an interpretation and application of the Supima Licensing Agreement. The same is true with respect to the challenge to the method used by the Supima Association to test Tradeline's yarn.

Second, the Complaint alleges "pre-arranged, collusive behavior" between the Supima Association and Defendants "demonstrating that the claims are intimately founded in and intertwined with the [Supima Licensing Agreement]." *PRM, 592 F. 3d at 835.* It also alleges that the "relationship of the persons, wrongs and issues involved is a close one." This same principle was recognized in *Sun Valley,* through its reference to "when the relationship between the signatory and nonsignatory defendants is sufficiently close that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided." 231 Ariz. at 296.

The Complaint alleges that Elder, who is the Head of Marketing at defendant Boswell, is also the Chairman of the Board of Directors of the Supima Association, and that Neufeld, who is a member of the Board of Directors of defendant Jess Smith Cotton, is also a member of the Board of Directors of the Supima Association. The Complaint alleges that both Elder and Neufeld took "active steps in furtherance of the conspiracy, Elder for the benefit of Boswell Co. and Neufeld for the benefit of Jess Smith Cotton." Dkt. 1 ¶ 29. Both "manipulated the Association to further their respective companies' desires to avoid competition, and they did so with the active agreement and participation of the Association itself." *Id.* As stated above, the Complaint also alleges that the Supima Association is not controlled by its employees. *Id.* ¶ 149. Instead, it is allegedly controlled "by its Board, its cotton grower members and its cotton merchant members." *Id.* Plaintiff also alleges that the Supima Association, "controlled by Jess Smith Cotton and Boswell Co., had an economic incentive to conspire to the same extent as Defendants Jess Smith Cotton and Boswell Co. had an incentive to conspire." *Id.* Those incentives include the direct threat posed to Defendants by Palayam's thesis (*id.* ¶ 42), and, specifically as to Jess Smith Cotton, concern over Tradeline's ability to perform under the Jess Smith Cotton Contracts. *Id.* ¶ 49.

Third, unlike the antitrust claims of the plaintiffs in *Wholesale Grocery,* the ones here are not independent of the operative agreement. There, the alleged inflation in the prices charged to the plaintiffs by defendants was not a product of the operative retail supply agreements with the plaintiffs that included arbitration clauses. Instead, it was the result of the Asset Exchange Agreement that the defendants entered. It was in that agreement that they allegedly agreed, *inter alia,* not to compete for sales to plaintiffs. As explained above, the claims here derive directly from the Supima Licensing Agreement.

Tradeline's reliance on *Ross v. Am. Exp. Co.*, 547 F.3d 137 (2d Cir. 2008) for a contrary result is unpersuasive. It contends that *Ross* focused its analysis of equitable estoppel on whether a signatory intended to arbitrate its claims against the non-signatory. In *Ross*, various class actions brought by cardholders of MasterCard, Visa and Diners Club were transferred to a Multi-District Litigation in which separate claims had been asserted against several major banks that issued these cards (the "MDL Defendants"). It was alleged that the MDL Defendants had conspired to fix prices for fees associated with foreign currency transactions. *Id.* at 139. *Ross* involved plaintiffs who had sued American Express

Company ("Amex"), alleging that it had conspired with the MDL Defendants as to the foreign currency transaction charges. *Id.* Although the plaintiffs had not signed any agreements with Amex, it sought to compel arbitration based on the agreements the plaintiffs had signed with the MDL Defendants. *Id.* at 139-140. The plaintiffs responded that "the only connection Amex claims to Plaintiff cardholders is its alleged antitrust conspiracy." *Id.* at 140.

Ross recognized the common principles that equitable estoppel considers "'the relationship among the parties, the contracts they signed . . . and the issues that had arisen among them.'" *Id.* at 143 (quoting *JLM Indus., Inc. v. Stolt-Nielsen S.A*., 387 F.3d 163, 176 (2d Cir. 2004)); *see also Sun Valley*, 231 Ariz. at 296 (equitable estoppel "takes into consideration the relationships of persons, wrongs, and issues") (internal quotation marks omitted). It concluded that the "further necessary circumstance of some relation between Amex and the plaintiffs sufficient to demonstrate that the plaintiffs intended to arbitrate this dispute with Amex" was "utterly lacking" because

> Amex has no corporate affiliation with the [MDL Defendants]; the plaintiffs allege without contradiction that Amex is in fact a *competitor* of the [MDL Defendants] in the credit card market. Amex did not sign the cardholder agreements, it is not mentioned therein, and it had no role in their formation or performance. The plaintiffs did not in any way treat Amex as a party to the cardholder agreements. On the contrary, they do not allege to have treated Amex at all. . . . Amex's only relation with respect to the cardholder agreements was as a third party allegedly attempting to subvert the integrity of the cardholder agreements. In sum, arbitration is a matter of contract and, contractually speaking, the plaintiffs do not know Amex from Adam. Amex therefore cannot avail itself of the arbitration agreements contained in the cardholder agreements.

Id. at 146 (emphasis in original).

This analysis provides the basis for the decision to deny the demand for arbitration. The intent of the signatory is not at the center of the rationale for the holding. Moreover, unlike the plaintiffs there, the Plaintiff in this action did consent to arbitrate issues with the Supima Association, and as explained above, there is a close relationship between the Association and the Defendants. Given that the Complaint alleges that the Association is operated by certain Defendants, it is also reasonable to infer that Plaintiff could have anticipated and consented to the arbitration of the present claims against those parties. It is also noteworthy that *Sun Valley* does not rely on the intent of the signatory.

* * *

For the foregoing reasons, the Boswell Motion and the Cotton Motion to Compel Arbitration are **GRANTED**.

C. The Motions for a Stay Pending the Completion of Arbitration

Both the Boswell Motion and the Cotton Motion to Compel Arbitration seek a stay of this action pending the completion of the arbitration. Jess Smith Cotton also argues that, because the single claim advanced

in this action is subject to arbitration, dismissal is appropriate. Dkt. 18-1 at 24 (citing *Jones-Mixon v. Bloomingdale's, Inc*., 2014 WL 2736020, at *10 (N.D. Cal. June 11, 2014) (dismissing action after finding that all issues in the case were arbitrable). Tradeline has not presented its views as to this issue.

Because the antitrust claim is to be arbitrated, this action will be stayed pending the conclusion of those proceedings. *See* Federal Arbitration Act, 9 U.S.C. § 3 (courts "shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the [arbitration] agreement"). At that time, any motions to confirm or set aside any award can be addressed.

D. Remaining Motions

The Cotton 12(b)(7) Motion states that, in the event that the arbitration of Tradeline's claim is not compelled, this action should be dismissed for its failure to name the Supima Association, which is a necessary party pursuant to Fed. R. Civ. P. 12(b)(7). Dkt. 19-1. The Cotton 12(b)(6) Motion argues that, if this action is not dismissed once arbitration is ordered or for failure to name a necessary party, it should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Dkt 21-1. Because Tradeline has been compelled to arbitrate its claims, these motions need not be addressed in this Order.

IV. Conclusion

For the reasons stated in this Order, the Boswell Motion and the Cotton Motion to Compel Arbitration are **GRANTED**. Tradeline is ordered to arbitrate its claim against Defendants. The action is stayed pending the conclusion of the arbitration. In light of these rulings, the Cotton 12(b)(7) Motion and the Cotton 12(b)(6) Motion are not addressed.

In the interim, the Court places this matter on its inactive calendar. During the period of the stay, the parties shall file a status report every 90 days, or within 10 days of any final decision in the arbitration, if that is sooner than when the next 90-day report is due. The first report shall be filed on or before November 1, 2016. The reports shall include a statement as to the procedural status of the arbitration, as well as an estimate of when those proceedings will conclude.

IT IS SO ORDERED.

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