UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

YANG KOO WOO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 3:16-CV-86-TAV-HBG
	)	
OCHIAI GEORGIA, LLC,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This civil action is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief and To Compel Arbitration [Doc. 15]. Plaintiff responded in opposition to the motion to dismiss [Doc. 23], and defendant replied [Doc. 28]. Plaintiff also filed a sur-reply [Doc. 35], and defendant filed a sur-sur-reply [Doc. 37]. For the reasons set forth herein, the Court will deny defendant's motion to dismiss.

I. Background[1]

Plaintiff, Yang Koo Woo, is the former president of SL Tennessee, LLC ("SL"), a manufacturer of automotive components [Doc. 1 ¶ 3]. SL and defendant, Ochiai Georgia, LLC, an automotive components supplier, allegedly entered into an agreement in 2009, whereby defendant agreed to supply certain parts to SL [*Id.* ¶ 9]. The agreement was signed by Steve Collins on behalf of SL, and plaintiff was neither a party to the

[1] The Court will only include facts relevant to its determination of the instant motion to dismiss.

agreement, nor did he sign the agreement in any capacity [*Id.* ¶¶ 11–12; Doc. 1-1 p. 19]. This agreement between SL and defendant included the following arbitration clause: "If a dispute arises out of, or relates to, or involves an alleged breach of this contract, and the dispute is not promptly resolved through negotiations, the parties agree to undertake resolution of the dispute by arbitration under the Rules of the American Arbitration Association" [Doc. 1-1 p. 21].

In November 2015, defendant filed an arbitration claim against SL and plaintiff, in his individual capacity, before the International Centre for Dispute Resolution, a division of the American Arbitration Association ("AAA") [Doc. 1 ¶¶ 1, 8; Doc. 15 p. 1]. Defendant specifically brings claims against plaintiff in his individual capacity for breach of an oral contract and promissory estoppel [Doc. 1-1 pp. 14–15]. The facts underlying these two claims relate to a negotiation and alleged oral agreement between plaintiff and Chang Ikk Sohn, defendant's sole member [*Id.*; Doc. 1 ¶ 4]. Defendant states in its arbitration claims that plaintiff "acted in his individual capacity" in negotiating the oral agreement and "acted in his official capacity" in negotiating and performing the written contract on behalf of SL [Doc. 1-1 p. 3].

As noted by defendant, plaintiff participated in an AAA conference call on January 5, 2016 [Doc. 15 p. 6; Doc. 15-2; Doc. 23 p. 2], and SL initially stated that it was seeking insurance coverage for plaintiff [Doc. 15 p. 7; Doc. 15-3]. On February 2, 2016, counsel for SL asserted in an email to the AAA that SL's firm would most likely represent plaintiff in the matter as well, and counsel for SL—without opposition from

defendant's counsel—requested an additional fourteen days to serve answering statements to defendant's claims, including objections to the AAA's jurisdiction [Doc. 15-3; Doc. 23 p. 3; Doc. 23-2]. The AAA granted the request, and on February 17, before discovery commenced or an arbitration panel was selected, plaintiff objected to the arbitrator's jurisdiction over him [Doc. 23 p. 3; Doc. 23-1].

Plaintiff also filed the instant proceeding on February 17, 2016, arguing that the claims brought against him by defendant are not subject to arbitration because there is no arbitration agreement between him and defendant—as plaintiff did not sign the agreement between SL and defendant, and no other arbitration agreement exists between plaintiff and defendant [Doc. 1 ¶ 1].

Consequently, plaintiff seeks a declaratory judgment and injunctive relief from this Court, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 [*Id.* ¶¶ 28, 35], barring defendant from pursuing claims against plaintiff in the arbitration forum. Defendant moves the Court to dismiss plaintiff's claims for lack of jurisdiction under Rule 12(b)(1) [Doc. 15].

II. Standard of Review

Federal courts are courts of limited jurisdiction, possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Therefore, subject matter jurisdiction is a threshold issue, which the Court must consider prior to reaching the merits of a case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998); *see* Fed. R. Civ. P.

12(h)(3) (stating that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"). Unlike a motion to dismiss on the merits under Rule 12(b)(6), "where subject matter jurisdiction is challenged under Rule 12(b)(1) . . . the plaintiff has the burden of proving jurisdiction in order to survive the motion." *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (quoting *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986) (internal quotation marks omitted)).

"Motions to dismiss for lack of subject matter jurisdiction fall into two general categories: facial attacks and factual attacks." *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). "A *facial* attack is a challenge to the sufficiency of the pleading itself." *Id.* In considering whether jurisdiction has been established on the face of the pleading, "the court must take the material allegations of the petition as true and construed in the light most favorable to the nonmoving party." *Id.* (citing *Scheuer v. Rhodes*, 416 U.S. 232, 235–37 (1974)).

"A *factual* attack, on the other hand, is not a challenge to the sufficiency of the pleading's allegations, but a challenge to the factual existence of subject matter jurisdiction." *Id.* In considering whether jurisdiction has been proved as a matter of fact, "a trial court has wide discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts." *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990) (citations omitted). "[N]o presumptive truthfulness applies to the factual allegations, and the court is free to weigh the evidence

and satisfy itself as to the existence of its power to hear the case." *Ritchie*, 15 F.3d at 598 (internal citation omitted).

Here, defendant supports its challenge to subject matter jurisdiction by submitting copies of the legal instruments at issue [Doc. 15-1], as well as emails related to the arbitration proceedings [Docs. 15-2, 15-3]. Thus, based on the circumstances of defendant's challenges, and because the emails are not part of the pleadings in this case, the Court finds that defendant's jurisdictional challenge is a factual attack. *See Ritchie*, 15 F.3d at 598. Consequently, the Court will evaluate all submitted documentation and will weigh the evidence, giving no presumptive truthfulness to plaintiff's allegations.

III. Analysis

Plaintiff contends that defendant may not compel him to arbitrate, and he thereby asks the Court to enjoin defendant from commencing or continuing any further proceedings against plaintiff in the AAA arbitration [Doc. 1 pp. 1, 7]. Defendant argues that plaintiff's causes of action for declaratory judgment and injunctive relief should be dismissed, pursuant to Rule 12(b)(1), because its claims against plaintiff are arbitrable and because the arbitrator, rather than this Court, has subject matter jurisdiction to determine the arbitrability of the claims [Doc. 15 pp. 2–3].

A. Threshold Arbitrability Issue

The Court will first address whether it, rather than strictly the arbitrator, has jurisdiction to determine the arbitrability of defendant's claims against plaintiff. According to defendant, language in the agreement "clearly and unmistakably provides"

that the arbitrators, not this Court, have the power to determine the issue of arbitrability [*Id.* at 9]. Thus, this Court should, defendant argues, "refrain from exercising any authority in this matter" and compel arbitration of this issue [*Id.*]. Plaintiff responds in opposition that this Court "is the appropriate venue to determine arbitrability" because he is a nonsignatory and nonparty to the agreement and because he did not otherwise waive his objection to arbitrability by making a timely objection to the arbitrator's jurisdiction and filing the instant action [Doc. 23 pp. 4–7].

1. Law

A party has the right to judicial determination of the issue of arbitrability, unless the parties "clearly and unmistakably provide otherwise." *AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986); *see First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (determining that the question of "who has the primary power to decide arbitrability" hinges on what the parties agreed about that particular matter—"Did the parties agree to submit the arbitrability question itself to arbitration?"). The arbitrability analysis consists of general contract formation principles, "not procedural compliance with the AAA's rules." *Crossville Med. Oncology, P.C. v. Glenwood Sys., LLC*, 485 F. App'x 821, 825 (6th Cir. 2012).

Thus, unless the parties clearly and unmistakably intended otherwise, "[b]efore compelling an unwilling party to arbitrate, the court must engage in a limited review to determine whether the dispute is arbitrable; meaning that a valid agreement to arbitrate exists between the parties and that the specific dispute falls within the substantive scope

of that agreement." *Javitch v. First Union Secs., Inc.*, 315 F.3d 619, 624 (6th Cir. 2003). Only after determining that there is a binding agreement to arbitrate between the parties does a court then decide if the dispute at issue falls within the scope of that agreement. *See Antonio Leonard TNT Prods., LLC v. Goossen-Tutor Promotions, LLC*, 47 F. Supp. 3d 500, 520 (S.D. Tex. 2014) (determining first that the nonsignatory deliberately sought and obtained direct benefits from the agreement before deciding whether the dispute in question fell within the scope of the agreement).

2. Application

Although the arbitration agreement between SL and defendant states that the rules of the AAA shall apply to arbitration of any disputes between the parties, and the AAA rules state that the arbitrator possesses the power to rule on the issue of arbitrability, as previously noted, plaintiff was not a party to this agreement. Plaintiff did not, therefore, "clearly and unmistakably" demonstrate intent to allow an arbitrator to determine the issue of arbitrability based on the agreement. *AT & T*, 475 U.S. at 649.

Furthermore, the Court finds that plaintiff forcefully resisted arbitration of the arbitrability issue to a sufficient degree, such that his conduct before the arbitrator cannot be interpreted as clearly acquiescing to the arbitrator's authority to rule on the issue of arbitrability. *See First Options*, 514 U.S. at 941, 946. Rather, plaintiff formally objected to the arbitrator's authority after a short period of time and immediately brought the instant action, seeking judicial determination of the issue. These actions stand in contrast

with defendant's supposition that plaintiff clearly intended to allow the arbitrator to resolve questions of arbitrability with regard to defendant's claims against plaintiff.

Defendant argues that plaintiff's objection was "belated" and should not be condoned by the Court [Doc. 15 p. 7]. Although plaintiff participated in a conference call regarding arbitration proceedings, this call appears to have concerned preliminary matters, and the Court does not find that plaintiff's participation clearly and unambiguously demonstrates his intent to preclude judicial determination of the arbitrability issue. Furthermore, the email cited by defendant between SL's counsel and defendant's counsel was not sent on behalf of plaintiff, as SL's counsel did not represent plaintiff at this time [Doc. 15-3]. Significantly, the email, sent by SL's counsel on February 2, 2016, also requested an additional fourteen days to file answering statements to defendant's demand for arbitration [*Id.*]. The AAA granted this request, and plaintiff objected to the arbitration proceeding as to defendant's claims against him and filed the instant suit on February 17, 2016 [Doc. 23 p. 3; Doc. 23-1].

Thus, the Court finds that plaintiff's timely objections to the arbitration panel and the bringing of the instant lawsuit constitute sufficiently "forceful opposition" for the Court to conclude that plaintiff did not clearly and unmistakably agree to submit the question of arbitrability to the arbitration panel. *See First Options*, 514 U.S. at 941, 946 (finding that the nonsignatory, who filed written objections with the arbitration panel, had shown sufficient opposition to the arbitrator's jurisdiction to determine arbitrability); *Crossville*, 485 F. App'x at 825 ("By communicating an objection to the arbitrator's

authority during a preliminary phase of the arbitration, [the defendant] reserved for judicial determination the question of arbitrability."). The Court consequently finds that it possesses jurisdiction to determine the issue of arbitrability as to defendant's claims against plaintiff.

The Court will now evaluate whether plaintiff has set forth sufficient evidence that he cannot be compelled to arbitrate in order to withstand defendant's 12(b)(1) motion to dismiss.

B. Issue of Whether Defendant May Compel Plaintiff To Arbitrate

As arbitration agreements are—at their core—contracts, courts review the enforceability of an arbitration agreement according to the applicable state law. *See Byrd v. SunTrust Bank*, No. 2:12–cv–2314, 2013 WL 3816714, at *5 (W.D. Tenn. July 22, 2013) (citing *Hergenreder v. Bickford Senior Living Grp., LLC*, 656 F.3d 411, 415 (6th Cir. 2011)). Generally, however, the Federal Arbitration Act ("FAA") sets forth a "liberal federal policy favoring arbitration agreements." *Equal Emp't Opportunity Comm'n v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) (internal citations and quotation marks omitted); *see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Highlands Wellmont Health Network, Inc. v. John Deere Health Plan, Inc.*, 350 F.3d 568, 573 (6th Cir. 2003) (observing that "any doubts regarding arbitrability must be resolved in favor of arbitration"). Courts must take this policy in favor of arbitration into account, even when applying state contract law. *Walker v. Ryan's Family Steak Houses, Inc.*, 400 F.3d 370, 377 (6th Cir. 2005).

While there is a strong and "liberal federal policy favoring arbitration agreements," *Waffle House*, 534 U.S. at 289, arbitration agreements should not ordinarily "be so broadly construed to encompass claims and parties that were not intended by the original contract." *Thomson-CSF, S.A. v. Am. Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995). In general, arbitration is a "matter of consent," and "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960); *Doran v. Bondy*, No. 5:04-CV-99, 2005 WL 1907252, at *5 (W.D. Mich. Feb. 18, 2005).

A nonsignatory may, however, be bound to an arbitration agreement under certain circumstances, if dictated by "ordinary principles of contract and agency." *McAllister Bros., Inc. v. A & S Transp. Co.*, 621 F.2d 519, 524 (2d Cir. 1980); *see Fisser v. Int'l Bank*, 282 F.2d 231, 233 (2d Cir. 1960) ("It does not follow, however, that under the [Federal Arbitration] Act an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision."). The analysis concerning whether a nonsignatory is bound by an agreement to arbitrate varies based on who is attempting to compel arbitration. If a nonsignatory wishes to compel a signatory to arbitrate a dispute, courts are typically more likely to order arbitration. *See Thomson*, 64 F.3d at 779 (stating that "the circuits have been willing to estop a *signatory* from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are

intertwined with the agreement that the estopped party has signed"); *Merrill Lynch Inv. Managers v. Optibase, Ltd.*, 337 F.3d 125, 131 (2d Cir. 2003) ("[I]t matters whether the party resisting arbitration is a signatory or not." (citing *Thomson*, 64 F.3d at 779)). If a signatory seeks to arbitrate with an unwilling nonsignatory, it must establish one of five specifically recognized theories, as described in *Thomson*: "(1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel." 64 F.3d at 776.

Here, defendant does not dispute that plaintiff did not sign the agreement, either in his individual capacity or in an official capacity on behalf of SL. It contends, however, that plaintiff is legally required to arbitrate, pursuant to the agreement between SL and Ochiai. Defendant argues that plaintiff's conduct "arose from his role as President of SL Tennessee and was related to the agreement between SL Tennessee and Ochiai Georgia" [Doc. 15 p. 6]. Thus, according to defendant, plaintiff must submit to arbitration, pursuant to *Letizia*, *Arnold*, and *Safe Step* [*See* Doc. 15 pp. 3–6 (citing *Letizia v. Prudential Bache Secs. Inc.*, 802 F.2d 1185 (9th Cir. 1986); *Arnold v. Arnold Corp.*, 920 F.2d 1269 (6th Cir. 1990); *Safe Step Walk-in Tub Co. v. GreenworksUS*, No. 3:13–cv–00489, 2015 WL 2384033 (M.D. Tenn. May 19, 2015))]. As argued by plaintiff, however, the Court finds that these cases are distinguishable from the instant matter [Doc. 23 pp. 7–9].

In *Letizia*, the Ninth Circuit addressed a nonsignatory individual defendants' attempt to compel arbitration, rather than a signatory's attempt to compel a nonsignatory

to arbitrate. 802 F.2d at 1188. Similarly, in *Arnold*, the Sixth Circuit considered whether the nonsignatory defendants were *entitled* to arbitration as agents of the signatory defendant. 920 F.2d at 1281. The court in *Arnold* cited to the Ninth Circuit's *Letizia* opinion, stating that "the employees were not deprived of arbitration simply because they were alleged to have sought personal enrichment through unauthorized 'churning' of accounts." *Id.* at 1282. The court then determined that the case before it was similar to *Letizia* and that the defendants were "entitled to have the entire dispute arbitrated, where, as here, the [defendants] wish to submit to arbitration." *Id.* Finally, in *Safe Step*, the district court again addressed a nonsignatory party's attempt to compel arbitration of claims brought against him personally. 2015 WL 2384033, at *1.

Thus, the courts' analyses in these three cases cited by defendant differ fundamentally from the case currently before this Court. *See Merrill Lynch*, 337 F.3d 125; *Thomson*, 64 F.3d at 779. In *Letizia*, *Arnold*, and *Safe Step*, it was sufficient that the claims against the nonsignatories arose from the nonsignatories' wrongful acts as agents of signatories and related to the underlying agreement in order for the courts to afford the nonsignatories the benefits of the arbitration agreements, which they sought. *See Letizia*, 802 F.2d at 1187–88; *Arnold*, 920 F.2d at 1282; *Safe Step*, 2015 WL 2384033, at *3. The courts, under these circumstances, followed "the well-settled principle affording agents the benefits of arbitration agreements made by their principal." *Arnold*, 920 F.2d at 1282. Here, however, the nonsignatory actively resists arbitration of defendant's claims against him, rendering *Letizia*, *Arnold*, and *Safe Step* distinguishable.

While defendant is correct in its contention that the FAA gives rise to a "presumption in favor of arbitration" [Doc. 15 p. 10], this presumption cannot force a nonsignatory to arbitrate unless traditional principles of contract law or agency law demand otherwise. *Source One*, 2009 WL 3464707, at *4. The broad, far-reaching arbitration provision contained in the contract between SL and defendant does not change this result. Despite alleged connections between defendant's claims against plaintiff and the agreement between SL and defendant, this Court finds that, as argued by plaintiff, one of the five theories of *Thomson* must apply in order for the Court to compel arbitration of defendant's claims against plaintiff [Doc. 35 pp. 2–3]. Defendant has not directed the Court's attention to any case law that indicates that a nonsignatory can be bound to an arbitration agreement with a less than a full showing of some articulable theory under contract or agency law.

In its reply to plaintiff's response [Doc. 28], defendant appears to argue that plaintiff can be bound by the arbitration agreement under the theories of agency and estoppel [*Id.* at 2]. Defendant does not argue that plaintiff is bound by the arbitration agreement under any other theory. The Court will only, therefore, address the applicability of these two theories in greater detail.

1. Agency Theory

Turning first to the agency theory, the Court notes that "[t]raditional principles of agency law may bind a nonsignatory to an arbitration agreement." *Thomson*, 64 F.3d at 777. Under Tennessee law, "[w]hen an agency relationship has been established, the

principal may be bound by the acts of the agent performed on the principal's behalf and within the actual or apparent scope of the agency." *Creech v. Addington*, 281 S.W.3d 363, 373 (Tenn. 2009). "The scope and extent of an agent's authority are questions of fact that must be determined from all of the facts and circumstances of the particular case." *Raleigh Court Condos. Homeowners' Ass'n v. E. Doyle Johnson Constr. Co.*, No. E2012–02474–COA–R3–CV, 2013 WL 4679971, at *12 (Tenn. Ct. App. Aug. 29, 2013).

In the context of arbitration clauses, "agents and employees of a principle [sic] subject to an arbitration agreement will be bound by the agreement even though they did not sign the agreement where the employee's or agent's acts give rise to the plaintiff's claim." *Bondy*, 2005 WL 1907252, at *6. The Sixth Circuit in *Arnold*, 920 F.2d 1269, expanded upon this reasoning, holding that the defendant nonsignatories were permitted to arbitrate their disputes where the "alleged wrongful acts relate[d] to the nonsignatory defendants' behavior as officers and directors or in their official capacities as agents of the . . . Corporation." *Id.* at 1282.

This analysis nevertheless differs, however, depending on whether the nonsignatory is resisting or compelling the arbitration of claims. *See id.* at 1282 (addressing the agency theory in the context of all the defendants desiring arbitration of the entire dispute); *Bondy*, 2005 WL 1907252, at *6 (same). Indeed, when evaluating whether a nonsignatory can compel arbitration, courts voice concern that signatories could avoid the practical consequences of an agreement to arbitrate simply by asserting claims against agents of the signatories, rather than the signatory–principals. *See Emcom*

Assocs. v. Zale Corp., No. 16-1985, 2016 WL 7232772, at *9 (D. N.J. Dec. 14, 2016) (holding that the plaintiff could not "circumvent the arbitration agreement" by asserting claims against the nonsignatory in his individual capacity because then the plaintiff signatory "could potentially avoid the practical consequences of an agreement to arbitrate by simply asserting individual claims against agents of signatories").

Here, plaintiff—the nonsignatory agent—is resisting arbitration of defendant's claims against him. Thus, this Court has no concern that plaintiff is attempting to circumvent an agreement to which he is a party and is reluctant to enforce the arbitration agreement against plaintiff under these circumstances. *See Thomson*, 64 F.3d at 779 (noting that courts are willing to estop a signatory from avoiding an arbitration clause but are reluctant to enforce an arbitration clause against a nonsignatory who seeks to avoid it).

Furthermore, defendant's claims against plaintiff do not appear to relate to alleged actions by plaintiff committed in his official capacity, and defendant does not allege that plaintiff's actions—as stated in its claims against plaintiff—also gave rise to defendant's claims against the principal, SL. Rather, defendant asserts claims against plaintiff individually for his breach of an oral contract and for promissory estoppel. Moreover, plaintiff's alleged motivation for entering into this oral agreement was—according to defendant—to prepare for plaintiff's own, personal retirement. Thus, based on the record before the Court, it does not appear that plaintiff's conduct underlying defendant's claims against him give rise to—or would theoretically give rise to—claims by defendant against

SL, the principal. *Bondy*, 2005 WL 1907252, at *6. Plaintiff has sufficiently demonstrated, therefore, that traditional principles of agency law do not mandate arbitration of defendant's claims against plaintiff, and the Court will consequently deny defendant's motion to dismiss under Rule 12(b)(1) as to this theory. *See id.*; *Raleigh Court Condos*, 2013 WL 4679971, at *12.

2. Estoppel Theory

Having found that plaintiff's claims are not subject to dismissal pursuant to the agency theory, the Court will now determine whether, based on the record currently before the Court, the estoppel theory compels arbitration of defendant's claims against plaintiff.

Under the estoppel theory, "an [individual who] accepts the benefits of a contract to which [he] is not a party should be deemed, on equity grounds, to have accepted the obligations contained in the contract as well." *OSU Pathology Servs., LLC v. Aetna Health, Inc.*, No. 2:11–cv–005, 2011 WL 738051, at *6 (S.D. Ohio Feb. 24, 2011). In order for the estoppel theory to apply, the nonsignatory must have received a "*direct* benefit from the contract while disavowing the arbitration provision." *Javitch*, 315 F.3d at 629. The most common scenario where courts find that the nonsignatory has received a direct benefit is where the nonsignatory brings claims directly under the contract. *See Antonio*, 47 F. Supp. 3d at 514 ("Direct benefits estoppel applies when a nonsignatory 'knowingly exploits the agreement containing the arbitration clause.'"); *OSU*, 2011 WL 738051, at *8 ("*Javitch* is ordinarily cited in the context of a suit brought

by a non-signatory under the contract, and a claim, in response, that if the non-party is seeking to enforce the contract (the "direct benefit") it must take the contract in its entirety, including the arbitration clause."). "In other words, a nonsignatory cannot seek to enforce contract rights while avoiding that contract's requirement of arbitration." *Schafer v. Johanson*, No. 09-10349-BC, 2009 WL 2496943, at *10 (E.D. Mich. Aug. 17, 2009).

In certain circumstances, courts have found that nonsignatories incurred direct benefits from the agreement in a manner other than by suing under the contract. *See, e.g.*, *Antonio*, 47 F. Supp. 3d at 515 (determining that the proper inquiry as to this issue is "whether the nonsignatory demanded and received substantial and direct benefits under the contract containing the arbitration clause, by suing the signatory under that contract or otherwise"); *Wood v. PennTex Res., L.P.*, 458 F. Supp. 2d 355, 367 (S.D. Tex. 2006) (concluding that the nonsignatory had received direct benefits because he had participated in negotiating the relevant agreement, was named in the agreement, and had been involved in the agreement's execution and performance). Other courts within the Sixth Circuit have noted that "the exact parameters of this doctrine are unclear," and courts have rarely taken this approach. *OSU*, 2011 WL 738051, at *8.

An *indirect* benefit, however, is categorically insufficient to compel a nonsignatory to arbitrate under the estoppel theory. *See Thomson*, 64 F.3d at 779 ("When only an indirect benefit is sought, however, it is only a signatory that may be estopped from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking

to resolve in arbitration are intertwined with the underlying contract."). For instance, if a party derives benefits from a related business endeavor, and not from the agreement itself, then the nonsignatory party cannot be forced to arbitrate based upon the agreement. *See Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 417 F.3d 682, 684 (7th Cir. 2005) ("Even assuming that [the subsidiary] has benefitted from the deductible agreements by paying lower insurance premiums based on the deductibles, this benefit is too attenuated and indirect to force arbitration under an estoppel theory."); *MAG Portfolio Consult, GMBH v. Merlin Biomed Grp. LLC*, 268 F.3d 58, 61 (2d Cir. 2001) ("[T]he benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relation of the parties to an agreement, but does not exploit (and thereby assume) the agreement itself."); *Thomson*, 64 F.3d at 779 (stating that the nonsignatory derived benefits directly from its acquisition of the signatory, rather than from the agreement itself, and, therefore, the nonsignatory was not bound by the arbitration agreement).

Here, defendant claims that plaintiff was "involved with the negotiation of the agreement at issue" and "sought to personally benefit from the contract by promising that [SL] would continue to provide orders to [d]efendant if [plaintiff] was later given an equity interest in [d]efendant" [Doc. 28 p. 2]. It argues that plaintiff's oral agreement was "clearly related" to the agreement between SL and defendant [*Id.* at 3]. As noted by plaintiff, however, defendant does not submit evidence to support this contention, and it does not explain how the breach of the two agreements are "inextricably intertwined" in a manner that estops plaintiff from avoiding arbitration.

Defendant also argues that plaintiff should be estopped from avoiding the arbitration clause because he "knowingly exploited" the agreement [*See id.* (citing *Antonio*, 47 F. Supp. 3d 500)]. Defendant contends that plaintiff "used the agreement between [d]efendant and [SL] as the basis of his scheme to featherbed his financial future by promising future orders from [SL] in exchange for a future equitable interest in [d]efendant" [*Id.*]. The Court finds, however, that—as argued by plaintiff—defendant's contentions are, at best, accusations that plaintiff received indirect benefits. This is insufficient to support the estoppel theory. *See Thomson*, 64 F.3d at 779.

Defendant does not dispute that plaintiff has not brought suit under the agreement. Thus, the typical kind of direct benefit addressed in estoppel case law is not present in the current case. *See OSU*, 2011 WL 738051, at *8. Although defendant claims that plaintiff negotiated the agreement and directly benefited from it in other manners, the Court finds that there is insufficient evidence in the record to support dismissal of plaintiff's claims for lack of jurisdiction pursuant to this argument by defendant. Defendant accuses plaintiff of negotiating the agreement "with an eye towards securing his financial future," yet it presents no evidence that plaintiff negotiated the agreement, and the Court notes that a different SL employee signed the contract on SL's behalf.

In order for estoppel to apply, plaintiff must have sought benefits *directly* from the agreement containing the arbitration clause, and "the benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relation of the parties to an agreement, but does not exploit (and thereby assume) the agreement itself." *Thomson*, 64

F.3d at 778–79. If plaintiff derived benefits from defendant's relationship with SL, but not directly from the agreement, this would be insufficient for the Court to apply estoppel. *See MAG Portfolio*, 268 F.3d at 61.

Defendant has not pointed to evidence that plaintiff deliberately sought and obtained direct benefits from the agreement and performed a substantial part of the obligations of the agreement, as needed for the Court to dismiss plaintiff's claims at this juncture—even under *Antonio*, 47 F. Supp. 3d 500, as cited by defendant. *See id.* at 515 (determining that the proper inquiry as to this issue is "whether the nonsignatory demanded and received substantial and direct benefits under the contract containing the arbitration clause, by suing the signatory under that contract or otherwise"). Plaintiff has set forth case law demonstrating that, on its face, defendant's accusations are too attenuated and indirect to force plaintiff to arbitrate under the estoppel theory.

Thus, the Court finds that—based on the record before it at this juncture—these alleged benefits to plaintiff were more indirect than direct and stemmed more from the business relationship between SL and defendant than from the agreement itself. Thus, plaintiff has sufficiently demonstrated that he, as a nonsignatory, did not receive direct benefits from the agreement and, thereby, assume the agreement's terms. *See Fitzgerald v. HRB Mgmt., Inc.*, No. 05-CV-74768-DT, 2006 WL 1984173, at *8 (E.D. Mich. July 13, 2006) ("[C]onclusory allegations of a general agency relationship between a signatory and non-signatory do not suffice to compel . . . unwilling non-signatories to arbitrate under that theory." (quoting *AICO v. Merrill Lynch & Co.*, 98 F. App'x 44, 46–47 (2d

Cir. 2004))). Plaintiff has, therefore, shown that the estoppel theory does not strip this Court of jurisdiction to hear the instant case. *See Javitch*, 315 F.3d at 629; *Thomson*, 64 F.3d at 779; *Ritchie*, 15 F.3d at 598.

Seeing as none of the five recognized theories that can potentially compel a nonsignatory to arbitrate directly apply in this case based on the current record, the Court finds that it possesses jurisdiction to hear this matter. The Court also finds that some amount of discovery would be necessary in order to determine if any of the five theories conclusively apply. The Court will, therefore, deny defendant's motion to dismiss under Rule 12(b)(1). *See Fitzgerald*, 2006 WL 1984173, at *9 ("In sum, while having to litigate his claims in two different forums may be less preferable to [the party] than the opportunity to arbitrate all of his claims in one forum, his preference for ease of litigation cannot be permitted to expand his right to arbitration.").

IV. Conclusion

For the reasons stated herein, defendant's motion to dismiss [Doc. 15] is hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE