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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TRAF INTERCONTINENTAL
ELEKTRONIK-HANDELS GmbH,
a German company,

Plaintiff,

v.

SONOCINE, INC., a Delaware corporation,

Defendant.

Case No. 3:17-cv-00672-LRH-WGC

ORDER

Plaintiff TRAF Intercontinental Elektronik-Handels GmbH (“TRAF”) moves to remand this matter to the Second Judicial District Court of Nevada. ECF No. 8. Defendant Sonocine, Inc. (“Sonocine”) opposed the motion, and TRAF replied. ECF Nos. 13, 16. Additionally, Sonocine moves for judgment on the pleadings. ECF No. 7. TRAF opposed the motion, and Sonocine replied. ECF Nos. 10, 14.

The court first denies the motion to remand, finding that it has jurisdiction under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”). The court also denies the motion for judgment on the pleadings, finding that disputes of material facts exist. But despite denying the motion for judgment on the pleadings, the court grants TRAF’s request for leave to amend its petition.

I. BACKGROUND

This matter centers on whether an arbitration award conferred by the International Centre for Dispute Resolution (“ICDR”) can be enforced under the Convention in conjunction with the

1 Commercial Rules of the American Arbitration Association. (“AAA”). ECF No. 1, Ex. A; see
2 also ECF Nos. 8, 13.

3 In 2014, TRAF, a German company, and Sonocine, a Delaware corporation, allegedly
4 entered into an agreement. ECF No. 1, Ex. A. The alleged agreement provided that TRAF would
5 provide consulting and business development services to Sonocine in the exchange for payment.
6 ECF No. 8, Ex. 3. The alleged agreement also provided that Nevada law would govern the
7 agreement and any disputes would be settled by the Commercial Arbitration Rules of the
8 American Arbitration Association. Id. Any arbitration was to be conducted in Reno, Nevada. Id.

9 TRAF alleges that Sonocine breached the agreement. ECF No. 1, Ex. A. It therefore
10 initiated arbitration proceedings with the American Arbitration Association. Id.; see also ECF
11 No. 8. A final award of \$50,000 was entered in favor of TRAF by an ICDR arbitrator. ECF No.
12 8, Ex. 23. The arbitrator cited the Commercial Rules of the AAA and the Convention as the
13 bases for his decision. Id. Throughout the arbitration proceedings and in its papers before this
14 court, Sonocine challenges the existence of an agreement and the enforceability of the arbitral
15 award. ECF Nos. 7–8, 13.

16 When Sonocine refused to pay the arbitral award, TRAF petitioned to enforce the award
17 in the Second Judicial District Court of the State of Nevada under Nevada Revised Statute
18 (“NRS”) § 38.239. ECF No. 1, Ex. A. Sonocine removed the matter to this court shortly after,
19 asserting that federal question jurisdiction exists based on the Convention. ECF No. 1. TRAF
20 now moves to remand the matter to state court. ECF No. 8. Sonocine opposes the motion to
21 remand and moves for judgment on the pleadings. ECF Nos. 7, 13.

22 **II. DISCUSSION**

23 Because TRAF’s motion to remand challenges whether the court has jurisdiction over
24 this matter, the court decides it first. The court then turns to Sonocine’s motion for judgment on
25 the pleadings.

26 **A. Motion to Remand**

27 To begin, the court decides if this matter should be remanded to the state court as TRAF
28 contends or if it is properly before this court based on federal question jurisdiction. “Federal

1 courts are courts of limited jurisdiction. They possess only that power authorized by Constitution
2 and statute....” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal
3 citations omitted). A defendant may remove a civil action brought in state court to federal court
4 if the matter could have been filed in federal court originally. 28 U.S.C. § 1441(a). The existence
5 of federal question jurisdiction must ordinarily arise from the face of a well-pleaded complaint
6 rather than from the defenses or counterclaims that could be alleged by a defendant. *Takeda v.*
7 *Nw. Nat. Life Ins. Co.*, 765 F.2d 815, 821–22 (9th Cir. 1985). But a matter may be removed to
8 federal court even if the ground for removal does not appear on the face of the complaint if the
9 action “relates to an arbitration agreement or award falling under the Convention.” 9 U.S.C. §
10 205; see also *Infuturia Glob. Ltd. v. Sequus Pharm., Inc.*, 631 F.3d 1133, 1137–38 (9th Cir.
11 2011). “If at any time before final judgment it appears that the district court lacks subject matter
12 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

13 When a motion to remand comes before a court, the party asserting jurisdiction bears the
14 burden of establishing the existence of federal jurisdiction. *Kokkonen*, 511 U.S. at 377. The party
15 must overcome the presumption “that [the] cause lies outside [the court’s] limited jurisdiction.”
16 *Id.* “The burden is particularly stringent for removing defendants because the removal statute is
17 strictly construed, and any doubt about the right of removal requires resolution in favor of
18 remand.” *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 773–74 (9th Cir. 2017)
19 (applying *Kokkonen* to a motion to remand) (internal quotation marks omitted).

20 TRAF asserts three arguments to support its motion to remand: (1) the at-issue contract
21 does not fall under the Convention; (2) Sonocine recognized that the court lacks jurisdiction in
22 other documents filed in this matter; and (3) Sonocine waived its right to remove this matter.
23 ECF No. 8. The court addresses each of TRAF’s arguments in turn.

24 1. Applicability of the Convention

25 The court first decides if the arbitral award falls under the Convention. The Convention is
26 “an international agreement providing for enforcement of foreign arbitral awards,” in which
27 “Party-States to the Convention agree to recognize arbitral awards as binding and enforce them
28 in accordance with their own rules of procedure.” *Ministry of Def. of Islamic Republic of Iran v.*

1 Gould Inc., 887 F.2d 1357, 1362 (9th Cir. 1989) (internal punctuation marks omitted). After the
2 United States became a party to the Convention in 1970, Congress codified the provisions of the
3 Convention in Chapter II of the Federal Arbitration Act. *Id.*; see also 9 U.S.C. §§ 201–208.

4 If an arbitral award falls under the Convention, federal district courts have original
5 jurisdiction over the matter because the matter necessarily “arise[s] under the laws and treaties of
6 the United States.” 9 U.S.C. § 203. An arbitral award falls under the Convention if it arises from
7 a legal relationship that is considered commercial and is not entirely domestic. 9 U.S.C. § 202;
8 see also *Ministry of Def. of Islamic Republic of Iran*, 887 F.2d at 1362 (listing the requirements
9 for jurisdiction to be conferred on a district court under the Convention). To be considered non-
10 domestic, the arbitral award or the related arbitration agreement must either (1) not be entirely
11 between citizens of the United States or (2) “involves property located abroad, envisages
12 performance or enforcement abroad, or has some other reasonable relation with one or more
13 foreign states.” 9 U.S.C. § 202; see also *Ministry of Def. of Islamic Republic of Iran*, 887 F.2d at
14 1362 (holding an arbitral award was “obviously not domestic in nature” because one of the
15 parties was not a United States citizen).

16 TRAF argues that the arbitral award in this matter is domestic and therefore does not fall
17 under the Convention. It reasons that the arbitral award is domestic because it was issued in the
18 United States and is also being enforced through a judicial action in the United States. The court
19 disagrees.

20 The arbitral award in this matter constitutes a nondomestic award under the Convention,
21 because it concerns a dispute arising from an alleged legal relationship not entirely between
22 United States citizens. The arbitral award relates to a legal relationship between a German
23 company (TRAF) and a Delaware corporation (Sonocine). It therefore is “obviously not
24 domestic in nature[.]” See *Ministry of Def. of Islamic Republic of Iran*, 887 F.3d at 1362.

25 It is inconsequential that TRAF obtained the arbitral award in the United States and seeks
26 to enforce the arbitral award in the United States; the award is still considered nondomestic
27 under the Convention. See *Jacada (Europe), Ltd. v. Int’l Mktg. Strategies, Inc.*, 401 F.3d 701,
28 706–08 (6th Cir. 2005), abrogated on other grounds by *Hall St. Assocs., L.L.C. v. Mattel, Inc.*,

1 552 U.S. 576 (2008) (explaining the history of the Convention and the definition of a
2 nondomestic award). Article 1(1) of the Convention provides that:

3 This Convention shall apply to the recognition and enforcement of arbitral awards
4 made in the territory of a State other than the State where the recognition and
5 enforcement of such awards are sought, and arising out of differences between
6 persons, whether physical or legal. It shall also apply to arbitral awards not
7 considered as domestic awards in the State where their recognition and
8 enforcement are sought.

9 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. 1(1), June 10,
10 1958, 21 U.S.T. at 2519, (emphasis added). Under the second sentence of Article 1(1), the
11 Convention applies to arbitral awards considered nondomestic. See *id.* Congress provided
12 guidance for distinguishing nondomestic awards from domestic awards, stating:

13 An agreement or award arising out of [a commercial, legal relationship] which is
14 entirely between citizens of the United States shall be deemed not to fall under the
15 Convention unless that relationship involves property located abroad, envisages
16 performance or enforcement abroad, or has some other reasonable relation with
17 one or more foreign states.

18 9 U.S.C. § 202 (emphasis added). While Section 202 refers to agreements “entirely between
19 citizens of the United States,” several circuit courts have relied on the above-emphasized criteria
20 to find an arbitral award or arbitration agreement between a United States citizen and a foreign
21 citizen as nondomestic even if a party obtained and enforced the arbitral award in the United
22 States. See, e.g., *Jacada (Europe), Ltd.*, 401 F.3d at 708–09 (Sixth Circuit opinion); *Indus. Risk*
23 *Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1440 (11th Cir. 1998); *Lander*
24 *Co. v. MMP Investments, Inc.*, 107 F.3d 476, 481–82 (7th Cir. 1997); *Jain v. de Mere*, 51 F.3d
25 686, 689 (7th Cir. 1995); *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 933 (2d Cir. 1983);
26 *Ledee v. Ceramiche Ragno*, 684 F.2d 184, 186–87 (1st Cir. 1982). The court agrees with the
27 circuit courts and holds that arbitral awards involving a United States citizen and a citizen of
28 another Party-State to the Convention qualifies as a nondomestic award. To hold otherwise
would lead to a “perplexing [result] that the foreign identity of one of the parties to the suit
actually makes a claim less likely to be governed by the Convention” than a suit entirely between
United States citizens. *Jacada (Europe), Ltd.*, 401 F.3d at 708.

Because the court finds that the arbitral award is nondomestic, the award will fall under
the Convention if it arises from an alleged legal relationship that is commercial in nature. The

1 alleged agreement between TRAF and Sonocine arranged for the exchange of payment for
2 business services. Thus, the alleged agreement arises from a legal relationship with a commercial
3 nature. It therefore falls under the Convention, giving the court jurisdiction over the matter.

4 2. *Sonocine's Contrary Statements*

5 The court next turns to TRAF's argument that the matter should be remanded to state
6 court because Sonocine admitted that the court lacks jurisdiction in its other filings. But TRAF
7 cites no law allowing the court to withhold the exercise of federal jurisdiction based on contrary
8 statements.¹ And as held above, the court has original jurisdiction over this matter because the
9 arbitral award falls under the Convention. So while it is true that Sonocine stated that the court
10 lacks jurisdiction over this matter in its other filings², TRAF fails to persuade the court to remand
11 the matter on the basis of Sonocine's contrary statements.

12 3. Waiver of Right to Remove

13 The court now considers TRAF's final argument. TRAF argues that Sonocine waived its
14 right to remove the matter to federal court by agreeing to arbitrate, in accordance with Nevada
15 laws, any dispute arising between the parties in relation to the agreement. TRAF also points to
16 Sonocine's refusal to participate in arbitration based on its belief that the Washoe County District
17 Court was the appropriate court to compel arbitration.

18 It is true that the alleged agreement provides for arbitration and for the applicability of
19 Nevada law. However, an agreement to apply Nevada law when construing the alleged
20 agreement does not equate to a waiver of federal jurisdiction over a matter involving the
21 enforcement of an arbitral award falling under the Convention. In other words, the alleged

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23 ¹ To the extent that TRAF is attempting to assert a judicial estoppel argument, the argument fails. The court has not
24 previously accepted an inconsistent position regarding its jurisdiction. *See Kobold v. Good Samaritan Reg'l Med.*
25 *Ctr.*, 832 F.3d 1024, 1044–45 (9th Cir. 2016) (“[C]ourts regularly inquire whether the party has succeeded in
persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a
later proceeding would create the perception that either the first or the second court was misled.” (internal quotations
omitted)).

26 ² In its answer, Sonocine asserts as an affirmative defense that the court lacks subject matter jurisdiction over
27 TRAF's claim. ECF No. 5, ¶ 2. In its motion for judgment on the pleadings, Sonocine argues that the arbitral award
28 cannot be enforced under the Convention because Sonocine never agreed to international arbitration or arbitration
conducted by the ICDR. ECF No. 7 at 4. It also asserts that the arbitral award does not constitute a foreign award as
contemplated by the Convention. *Id.* at 3. And finally, in both its answer and its motion for judgment on the
pleadings, Sonocine asserts the arbitral award cannot be enforced under the Convention because no valid agreement
exists between the parties. ECF Nos. 5, ¶ 5; ECF No. 7 at 3–4.

1 agreement merely provides for disputes to be resolved in arbitration using Nevada law. But the
2 agreement does not strip the court of its original jurisdiction to enforce an arbitral award—even
3 one made according to Nevada laws—when the award falls under the Convention. Thus, the
4 court dismisses TRAF’s final argument in support of its request for a remand and denies TRAF’s
5 motion accordingly.

6 **B. Motion for Judgment on the Pleadings**

7 The court now turns to Sonocine’s motion for judgment on the pleadings. Federal Rule
8 12(c) allows a party to move for judgment on the pleadings “[a]fter the pleadings are closed ...
9 but early enough not to delay trial[.]” Fed. R. Civ. P. 12(c). “A judgment on the pleadings is
10 properly granted when, taking all the allegations in the pleading as true, the moving party is
11 entitled to judgment as a matter of law.” *San Francisco Apartment Ass’n v. City & Cty. of San*
12 *Francisco*, 881 F.3d 1169, 1175 (9th Cir. 2018) (quoting *Heliotrope Gen., Inc. v. Ford Motor*
13 *Co.*, 189 F.3d 971, 978–79 (9th Cir. 1999)). Judgment on the pleadings is proper when there are
14 no issues of material fact, and the moving party is entitled to judgment as a matter of law.”
15 *General Conference Corp. of Seventh Day Adventists v. Seventh Day Adventist Congregational*
16 *Church*, 887 F.2d 228, 230 (9th Cir. 1989) (citing Fed. R. Civ. P. 12(c)). “The motion for a
17 judgment on the pleadings only has utility when all material allegations of fact are admitted or
18 not controverted in the pleadings and only questions of law remain to be decided by the district
19 court.” 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1367 (3d
20 Ed. 2004).

21 “In ruling on a motion for judgment on the pleadings, district courts must accept all
22 material allegations of fact alleged in the complaint as true, and resolve all doubts in favor of the
23 non-moving party.” *Religious Tech. Ctr. v. Netcom On-Line Comm. Servs., Inc.*, 907 F.Supp.
24 1361, 1381 (N.D. Cal. 1995). Judgment on the pleadings is improper if the district court must go
25 beyond the pleadings to resolve an issue. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
26 1542, 1550 (9th Cir. 1989).

27 Sonocine asserts three arguments to support its request for judgment on the pleadings. It
28 first argues that the arbitral award is not a foreign award and, thus, does not fall under the

1 Convention. But the court has resolved this argument in deciding the motion to remand. The
2 court holds supra that the arbitral award falls under the Convention because it is nondomestic.
3 The court arrived at its holding based in part on Sonocine’s assertions that the Convention
4 applied. The court will not now entertain Sonocine’s contrary argument. See Kobold, 832 F.3d at
5 1044–45 (outlining the elements for judicial estoppel).

6 Sonocine next argues for judgment on the pleadings because TRAF failed to attach a
7 copy of the alleged agreement as required by the Convention. But while the Convention gives
8 this court jurisdiction over the matter since the matter “relates to an [arbitral award] falling under
9 the Convention,” see 9 U.S.C. § 205, TRAF does not seek to enforce the arbitral award under the
10 Convention. ECF No. 1, Ex. A. It instead seeks to enforce the arbitral award under NRS
11 § 38.239. Thus, it is irrelevant that the Convention requires a party to attach alleged agreements
12 to a petition when the party is seeking to enforce an arbitral award under the Convention. NRS
13 Chapter 38 does not impose the same requirements. See NRS §§ 38.206–38.248.

14 Sonocine finally argues for judgment on the pleadings because TRAF failed to allege that
15 Sonocine agreed to international arbitration with the ICDR. This argument fails, too; TRAF
16 alleges that it presented its claims to the ICDR in conjunction with the AAA and that Sonocine
17 agreed to resolve disputes through arbitration conducted by the AAA. Id. Sonocine disputes
18 these allegations. ECF No. 5. This dispute, which involves material facts, prevents the court from
19 entering judgment as a matter of law in favor of Sonocine.

20 Despite Sonocine’s failure to persuade the court that it is entitled to judgment on the
21 pleadings, the court grants TRAF’s request for leave to amend its petition. Specifically, the court
22 notes that while NRS § 38.239 provides a basis on which TRAF can enforce its arbitral award in
23 state court, NRS § 38.244(2) confers exclusive jurisdiction to Nevada state courts to confirm an
24 award under NRS § 38.239 if the arbitration agreement provided for arbitration in Nevada. Here,
25 the alleged agreement states that any arbitration will be conducted in Reno, Nevada. TRAF
26 provides no alternative basis on which the court may confirm the award. Because this matter was
27 first brought in state court, alternate avenues for relief are available to TRAF, and TRAF
28 requested to amend its petition before the deadline imposed in the related scheduling order (see

1 ECF No. 21), the court grants TRAF leave to amend its petition. Fed. R. Civ. P. 15(a) (providing
2 leave to amend should be freely given). TRAF may amend its petition within thirty days of the
3 entry of this order.

4 **III. CONCLUSION**

5 IT IS THEREFORE ORDERED that TRAF Intercontinental Elektronik-Handels GmbH's
6 motion to remand (ECF No. 8) is **DENIED**.

7 IT IS FURTHER ORDERED that Sonocine, Inc.'s motion for judgment on the pleadings
8 (ECF No. 7) is **DENIED**.

9 IT IS FURTHER ORDERED that TRAF Intercontinental Elektronik-Handels GmbH has
10 leave to amend its petition within thirty days of the entry of this order.

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12 IT IS SO ORDERED.

13 DATED this 19th day of June, 2018.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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