IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AIRTOURIST HOLDINGS LLC,

Plaintiff,

v.

HNA GROUP, HNA GROUP (INTERNATIONAL) CO., LTD., HNA CAPITAL LTD., TAN XIANGDONG (aka ADAM TAN), SHEI LEI, CHARLES MOBUS, LI MING BI, and DOES 1-50,

Defendants.
_____/

No. C 17-04989 JSW

ORDER GRANTING MOTION TO COMPEL ARBITRATION

This matter comes before the Court upon consideration of the motion to compel arbitration filed by Defendants HNA Group (International) Co., Ltd., Shi Lei, Charles Mobus, and HNA Group Co., Ltd. ("Defendants"). Defendant Adam Tan also moves for joinder in the motion to compel arbitration. The Court has considered the parties' papers, relevant legal authority, the record in this case, and it HEREBY GRANTS Defendants' motion.

BACKGROUND

In the middle of 2015, Plaintiffs Jason Chen and Edgar Park and defendant HNA International jointly developed a new international online travel agency, Travana. The business model included offering inspirational and innovative product features targeted at younger travelers, such as partnerships with non-profit organizations and social media content. The parties documented their joint venture in a series of foundational contracts, each of which included a clause that provided that all disputes "arising out of or relating to" the agreements would be resolved in

arbitration.

After the contracts were executed, HNA International invested $27 million and Plaintiffs built up the business over 15 months, by leasing office space, hiring employees, and developing the company website. Plaintiffs allege that mid-2016, HNA International and the Travana board refused to provide continued funding for certain critical marketing expenses, and as a result, the company failed to meet the milestones in the foundational contracts, and later became insolvent. Based on these allegations, Plaintiffs allege sixteen causes of action sounding in contract and tort.

The Court shall address other, relevant facts in the remainder of this order.

ANALYSIS

Defendants move to compel arbitration and to stay this action in favor of arbitration on the grounds that Plaintiffs should be compelled by contract to submit their dispute to arbitration.

Pursuant to the Federal Arbitration Act ("FAA"), arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds that exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA represents the "liberal federal policy favoring arbitration agreements" and "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). Under the FAA, "once [the Court] is satisfied that an agreement for arbitration has been made and has not been honored," and the dispute falls within the scope of that agreement, the Court must order arbitration. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 400 (1967).[1]

The "central purpose of the [FAA is] to ensure that private agreements to arbitrate are enforced according to their terms." *Mastrobuono v. Shearson Lehman Hutton. Inc.*, 514 U.S. 52, 53-54 (1995). The "preeminent concern of Congress in passing the [FAA] was to enforce private agreements into which parties had entered, a concern which requires that [courts] rigorously enforce agreements to arbitrate." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, 473 U.S. 614, 625-26 (1985) (quotations omitted). The FAA is "an expression of 'a strong federal policy favoring

[1] This case falls within the ambit of the Convention Act which requires courts of signatory countries to give effect to commercial arbitration agreements in international contracts between private parties. *See Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974); *see also Balen v. Holland Am. Line Inc.*, 583 F.3d 647, 654-55 (9th Cir. 2009).

arbitration as an alternative means of dispute resolution.'" *Ross v. American Express Co.*, 547 F.3d 137, 142 (2d Cir. 2008) (quoting *Hartford Accident & Indemnity Co. v. Swiss Reinsurance Am. Corp.*, 246 F.3d 219, 226 (2d Cir. 2001)). Notwithstanding the liberal policy favoring arbitration, by entering into an arbitration agreement, two parties are entering into a contract. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 479 (1989) (noting that arbitration "is a matter of consent, not coercion."). Arbitration is a matter of contract, and therefore a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. *Vera v. Saks & Co.*, 335 F.3d 109, 116 (2d Cir. 2003) (citations omitted). Accordingly, "[w]hile the FAA expresses a strong federal policy in favor of arbitration, the purpose of Congress in enacting the FAA 'was to make arbitration agreements as enforceable as other contracts, *but not more so*." *Cap Gemini Ernst & Young U.S., LLC v. Nackel*, 346 F.3d 360, 364 (2d Cir. 2003) (quotations omitted).

The Court finds that Plaintiffs' claims are subject to the broad arbitration clauses in the agreements governing the formation, development, and governance of Travana. Each of the relevant formative contracts contain broadly-worded dispute resolution provisions requiring mandatory arbitration of "[a]ny unresolved controversy or claim arising out of or relating to" the parties' contracts. (*See* Complaint, Ex. E at § 6.14; Exs. F-H at § 9(1); Ex. G at § 9.12; Ex. M at § 6.10.)

In opposition, Plaintiffs contend that their claims do not fall within the scope of the arbitration clauses because the Travana Agreements are limited only to the "technical financing matters" or "corporate finance transactions." (Opp. Br. at 5-6.) The arbitration clauses in the Travana Agreements provide that the parties must chose an arbitrator with "reasonable experience in corporate finance transactions." (*See* Complaint, Ex. E at § 6.14.) This language affirms the position that the chosen arbitrator must have expertise and qualifications in the area concerning financial transactions. But the language regarding a chosen arbitrator does not purport to govern or limit the scope of the parties' arbitration agreements, which explicitly require arbitration for any and all disputes arising from or relating to the Travana Agreements. Further, the arbitration clauses themselves carved out an exception for claims arising out of either party's intellectual property rights, but do not provide an exception for any other type of dispute. (*See* Complaint, Ex. E at §

6.14; Exs. F-H at § 9(1); Ex. G at § 9.12; Ex. M at § 6.10.) The Court is not persuaded by Plaintiffs' contentions that the scope of the arbitration clause is limited to technical financing matters.

The allegations in the complaint belie the Plaintiffs' recharacterization of the contracts that form the entirety of the relationship between Plaintiffs and Defendants concerning Travana. The Series B Preferred Stock Purchase Agreement memorializes the terms of the preceding Letter Agreement. (*See* Complaint at Ex. E, Recitals.) The Series B Agreement addresses, inter alia, the initial capitalization of Travana, the milestones requiring further funding by HNA International, Travana's use of the funds contributed by HNA International, the voting agreements among stockholders, employment matters, and the composition of the board of directors. (*Id.*) The Vesting Agreements address the milestones that would cause Plaintiffs' stock to vest and the relationship between the founders, other stockholders, and HNA International. (*Id.*, Exs. F-G, Recitals.) The entirety of the business venture that forms the basis for the disputes at issue here are governed by the formative contracts addressed in the Complaint, and containing broad arbitration clauses. (*See id.* at ¶¶ 16, 22-23, 26, 40-45, 46.)

Here, the gravamen of the complaint is that HNA International failed to provide the financing it promised in the Travana Agreements, which caused Travana to miss the milestones, which in turn caused Plaintiffs' stock not to vest as contemplated in the Vesting Agreements. The complaint reiterates the claims, whether they be phrased as contract or tort claims, as a breach of the covenant of good faith and fair dealing of the parties' Series B Preferred Stock Purchase Agreement and Vesting Agreements. (*See id.* ¶¶ 26, 49, 78, 83, 113.) The Complaint is rooted in the relationship between the parties established by the Travana Agreements and the claims are predicated on the terms, performance, and relationships created and governed by the Agreements. *See Coast Plaza Doctors Hospital v. Blue Cross of California*, 83 Cal. App. 4th 677, 681, 684-85 (2000) (holding that tort claims were subject to arbitration clause where the allegations reflect a dispute that is inextricably related to the agreement's terms and provisions). Accordingly, the Court finds that the broad arbitration clauses govern the resolution of the claims brought by Plaintiffs.

In addition, Plaintiffs contend that the arbitration clauses should not be enforced against them as they were not parties to the governing contracts. General contract and agency principles

apply in determining the enforcement of an arbitration agreement by or against nonsignatories. *See Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1045 (9th Cir. 2009). The question of whether a nonsignatory to an arbitration clause can be bound by the agreement is analyzed under ordinary contract and agency principles. *See Letizia v. Prudential Bache Securities, Inc.*, 802 F.2d 1185, 1187-88 (9th Cir. 1986). Among these principles, are "(1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel." *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006) (citing *Thompson-CSF, S.A. v. Am. Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995)).

Among these principles, as applicable here, the Court finds Defendants are entitled to enforce the agreements pursuant to an agency doctrine and as third-party beneficiaries of the agreements. Plaintiffs clearly allege that non-signatory individual defendants acted as agents of the other defendants and Travana. (*See* Complaint ¶¶ 53, 118.) Based on these allegations, the individual defendants have standing to move to enforce the arbitration clauses in the Travana Agreements.

First, each Plaintiff personally and individually signed a Vesting Agreement. Plaintiffs allege that Defendants caused Travana to miss the milestones set forth in the Vesting Agreements; accordingly, Plaintiffs' claims must be arbitrated even if the Vesting Agreements were the only contracts at issue here. (*See id.*, Exs. F-H.)

Regardless, the Court finds that Plaintiffs should be bound by the arbitration clauses in the Travana Agreements because the status of Plaintiffs (including Adam Tan) as non-signatories is irrelevant where there is an agency relationship with a signatory. *See Amisil Holdings, Ltd. v. Clarium Capital Management*, 622 F. Supp. 2d 825, 830 (2007) (citations omitted; emphasis in original) (holding that "courts have made clear, however, that an obligation to arbitrate does not attach *only* to those who have actually signed the agreement to arbitrate. . . . a nonsignatory may be bound by an agreement to arbitrate under ordinary contract and agency principles."). Here, the record clearly indicates that the individual plaintiffs were integral in the founding of Travana, they were its first and only employees, and Plaintiffs executed contracts on behalf of Travana. (*See, e.g.*, Complaint ¶¶ 22, 40, 44, 55, 99.) Plaintiffs do not argue that the allegations of agency are

insufficient; rather they contend that the second requirement that the claims arise out of the contracts is not met here. (Opp. Br. at 14.) The Court finds this contention unpersuasive.

Further, Plaintiffs repeatedly allege that they stood to benefit from the founding of Travana and serve as third-party beneficiaries to the company's founding agreements. (*See* Complaint ¶¶ 43, 179, 205.) Equitable estoppel precludes Plaintiffs from "claiming the benefits of a contract while simultaneously attempting to avoid the burdens that the contract imposes." *Comer v. Micor*, 436 F.3d 1098, 1101 (9th Cir. 2006); s*ee also Harris v. Superior Court*, 188 Cal. App. 3d 475, 478 (1986) ("It is well established that a non-signatory beneficiary of an arbitration is entitled to require arbitration."). Where a non-signatory seeks to enforce an arbitration clause, "the doctrine of equitable estoppel applies in two circumstances: (1) when a signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory or the claims are intimately founded in and intertwined with the underlying contract, and (2) when the signatory alleges substantially interdependent and concerted misconduct by the nonsignatory and another signatory and the allegations of interdependent misconduct [are] founded in or intimately connected with the obligations of the underlying agreement." *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128-29 (9th Cir. 2013); *see also Goldman v. KPMG LLP*, 173 Cal. App. 4th 209, 229-30 (2009) (holding that equitable estoppel applies "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.") The Court finds that the claims in the complaint are premised upon the construction of the terms and foundational agreements among the parties to set up the endeavor and are "intimately founded in and intertwined with the underlying contract obligations." *See id.* The Complaint is based upon a series of operative facts that are inextricably intertwined with the claims arising from and relating to the contracts that form the basis of the parties' business venture. Based upon the doctrine of equitable estoppel, the moving defendants are entitled to compel arbitration of the current dispute.

CONCLUSION

Based on the foregoing reasons, the Court GRANTS Defendants' motion to compel arbitration and Tan's joinder. The Court STAYS this matter pending resolution of the dispute in arbitration. The Court DENIES as moot the motions filed by Plaintiffs for electronic service and for limited expedited discovery.

IT IS SO ORDERED.

Dated: March 27, 2018

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE