UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-5

CIVIL MINUTES – GENERAL

Case No.	LA CV15-08048 JAK (RAOx)	Date	July 10, 2018
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 DEFENDANTS' MOTION TO LIFT STAY AND CONFIRM ARBITRATION AWARD (DKT. 77)**

I. Introduction

Tradeline Enterprises Pvt. Ltd. ("Plaintiff") 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 a non-party, the Supima Association of America (the "Supima Association"), to cause Tradeline to lose its licensing with the Supima Association. Complaint, Dkt. 1. The license had permitted Tradeline to sell yarn using the Supima® brand. *Id.*

On July 29, 2016, this action was stayed pending the conclusion of the arbitration of Plaintiff's Sherman Act claims that had been ordered. Dkt. 60 at 2. On May 23, 2018, Defendants filed a motion to lift the stay and confirm the award made on April 10, 2018 by a panel of arbitrators of the International Centre for Dispute Resolution ("ICDR"). Dkt. 77 at 2.[1] Plaintiff opposed the Motion (Dkt. 79), and Defendants replied. Dkt. 80.

On June 25, 2018, a hearing was held on the Motion, and it was taken under submission. Dkt. 81. For the reasons stated in this Order, the Motion is **GRANTED**.

II. Factual and Procedural Background

A. The Parties

Plaintiff is a "Private Limited Company" organized under the law of India with its "registered office" there. Compl. ¶ 23. Within the terms commonly used by those in the cotton industry, Plaintiff is called a "spinner." *Id.* ¶ 3. A spinner manufactures yarn using cotton fiber. *Id.*

[1] The ICDR is the international branch of the American Arbitration Association ("AAA"). Declaration of Edward C. Duckers ("Duckers Decl."), Dkt. 77-2 ¶ 3.

Jess Smith Cotton is a California limited liability company with its principal place of business here. *Id.* ¶ 24. It is a cotton merchant that buys cotton from growers and sells it to spinners and textile mills. *Id.* ¶ 3. Boswell is a California company whose principal place of business is here. *Id.* ¶ 25. It grows American Pima cotton, which is also known as Supima cotton. *Id.* ¶¶ 3-4.

B. Summary of Allegations in the Complaint

The allegations in the Complaint are described in detail in a prior order. Dkt. 60 (the "Prior Order"). That discussion is incorporated by this reference. A brief summary of the allegations follows to provide context for the Motion.

In 2008, Plaintiff entered a licensing agreement with the Supima Association (the "Supima Licensing Agreement"). Compl. ¶ 32. The Supima Association is a professional association of cotton growers and merchants; it owns the Supima® trademark. *Id.* ¶ 4. The Supima Licensing Agreement permitted Tradeline to brand certain of its products with the Supima® trademark. *Id.* ¶ 33.

Article XI of the Supima Licensing Agreement contains the following arbitration provision:

> 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.

Dkt. 22-1 (Ex. A at 11).

Article VIII of the Supima Licensing Agreement sets forth the bases and process pursuant to which the Supima Association could terminate Plaintiff's licensing rights. *Id.* at 9-10. It provides, *inter alia*, that the Supima Association could do so if Plaintiff were included on "default" lists published by either the American Cotton Exporters' Association ("ACEA") or the Liverpool Cotton Association ("LCA"). *Id.* at 10. Article VIII provides that the licensee would, however, be granted "45 days from the date of inclusion on either default list to resolve [the] dispute and be removed before Supima terminates the license." *Id.*

The Complaint alleges that the Supima Association, Jess Smith Cotton and Boswell conspired to "deprive" Plaintiff of "important procedural protections it should have enjoyed" under the Supima Licensing Agreement. Compl. ¶ 172. It alleges that they did so to disparage Plaintiff's products, and to "strip" Plaintiff of its license with the Supima Association. *Id.* It alleges that these entities were motivated to take these actions due to the competitive threat posed by Plaintiff's thesis about Supima cotton (the "Thesis"). *Id.* at ¶¶ 7-11. Plaintiff's principal, Prashant Palayam, presented the Thesis to the Chairman of the Supima Association in August 2010. *Id.* ¶ 7. It called for Plaintiff to integrate "vertically" its supply chain by entering into direct contracts with small farmers of Supima cotton. *Id.* ¶ 40. This would allegedly eliminate "middlemen cotton merchants," such as Jess Smith Cotton, that buy cotton from growers and sell it to spinners. *Id.* It also allegedly posed a "direct threat" to cotton merchant members of the Supima Association, including Boswell, because they would suffer "significant price deterioration"

if the Thesis was adopted and implemented. *Id.* ¶ 42.

The Complaint alleges that the Supima Association "revoked" the Supima Licensing Agreement of Plaintiff on March 1, 2012, one day after ACEA placed Plaintiff on its default list. *Id.* ¶¶ 128-29. It alleges that the revocation was in violation of the 45-day grace period provided in Article VIII of that agreement. *Id.* ¶ 122, 130.

C. The Motions to Compel Arbitration

In December 2015, Boswell and Jess Smith Cotton brought parallel motions to compel arbitration. Dkts. 16, 18. Plaintiff opposed each motion (Dkts. 28, 30) and Defendants replied. Dkts. 44, 47. A hearing was held on these motions on April 4, 2016. Dkt. 52. At the hearing, the parties were ordered to file supplemental briefing about certain cases identified by the Court with respect to whether the Sherman Act claim presented by Plaintiff is subject to arbitration. Those cases are: *Am. Bankers Ins. Grp., Inc. v. Long*, 453 F.3d 623 (4th Cir. 2006), *PRM Energy Sys., Inc. v. Primenergy, L.L.C.*, 592 F.3d 830 (8th Cir. 2010) and *In re Wholesale Grocery Prods. Antitrust Litig.*, 707 F.3d 917 (8th Cir. 2013). Each party timely filed a supplemental brief. Dkts. 53, 54, 56.

On July 29, 2016, the motions to compel arbitration were granted, and Plaintiff was ordered to arbitrate its Sherman Act claims. Dkt. 60. The Prior Order concluded that Defendants could compel arbitration under the Supima Licensing Agreement notwithstanding that they are not signatories to that agreement. *Id.* at 17. In reaching this conclusion under Arizona law,[2] the Court relied on the equitable estoppel doctrine:

> 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. *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)).
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> 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

[2] The Supima Licensing Agreement contains a choice of law provision that 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.").

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 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)).

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.*

Prior Order at 9-10 (footnotes omitted).

The Prior Order also analyzed *Am. Bankers Ins. Grp., Inc. v. Long*, 453 F.3d 623 (4th Cir. 2006), *PRM Energy Sys., Inc. v. Primenergy, L.L.C.*, et al., 592 F.3d 830 (8th Cir. 2010) and *In re Wholesale Grocery Prods. Antitrust Litig.*, 707 F.3d 916 (8th Cir. 2013) at length. *Id.* at 10-17. It recognized that,

although none of these cases is controlling as to the issues that were presented in the motions to compel arbitration, each is consistent with *Sun Valley*. Thus, each is in harmony with the principle 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." *Id.* at 10.

The Prior Order reached the following conclusions in reliance on *Sun Valley* and the cited Circuit Court decisions:

> *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.
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> . . .
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> *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.
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> . . . .
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> *Third,* unlike the antitrust claims of the plaintiffs in *Wholesale Grocery,* the ones here are not independent of the operative agreement. . . . [T]he claims here derive directly from the Supima Licensing Agreement.

Id. at 15-16.

Plaintiff did not seek reconsideration of the Prior Order.

D. The Arbitration

1. Procedural History

On September 8, 2016, Plaintiff filed a demand for arbitration with the ICDR, Case No. 01-16-0003-8669, *Tradeline Enterprises Pvt. Ltd. v. Jess Smith Sons Cotton, LLC, et al.* Duckers Decl., Dkt. 77-2 ¶ 3; *see* Ex. 2 to Duckers Decl., Dkt. 77-2 at 156 (Demand). The Demand names Jess Smith Cotton, Boswell and the Supima Association as respondents (collectively, "Respondents"). Dkt. 77-2 at 157. On October 21, 2016, Respondents answered the Demand. Ex. 3 to Duckers Decl., Dkt. 77-2 at 257 (Jess Smith Cotton Answer); Ex. 1 to Declaration of Dan Woods ("Woods Decl."), Dkt. 77-3 at 5 (Boswell Answer).

In November 2016, Plaintiff and Respondents each designated their respective nominees to the Tribunal. Duckers Decl., Dkt. 77-2 ¶ 6. Plaintiff appointed Rosemary Barkett of the Iran-United States Claims Tribunal, and formerly a judge on the United States Court of Appeals for the Eleventh Circuit. *Id.*

Respondents appointed David J. Beck of Beck Redden LLP. *Id.* In January 2017, Judge Barkett and David Beck nominated J. William Rowley, QC of 20 Essex Street Chambers of London, England, as the Chair of the three-member arbitration tribunal (the "Tribunal"). *Id.*

On May 15, 2017, Plaintiff filed its Statement of Claim with the Tribunal. *Id.* ¶ 7. Each of the Respondents filed a separate Statement of Defense on August 1, 2017. *Id.* Plaintiff subsequently filed a Statement of Reply, and Respondents then filed their Statement of Rejoinder. *Id.* On August 4, 2017, Boswell filed an application for security for costs against Plaintiff, in which Jess Smith Cotton joined. Plaintiff opposed the application. *Id.*

The arbitration hearing was held before the Tribunal in Toronto, Canada between February 26 and March 3, 2018. *Id.* ¶ 8. Over the course of the arbitration, the Tribunal heard testimony from numerous lay and expert witnesses and received hundreds of exhibits into evidence. *Id.* Following the hearing, Plaintiff and Respondents filed their respective fees and costs submissions. *Id.*

On April 10, 2018, the Tribunal issued a 150-page final award. *Id.* ¶ 2; *see* Ex. 1 to Ducker Decl., Dkt. 77-2 at 5 (Award). The Tribunal sent a copy of the Award to counsel for both Plaintiff and Respondents on May 11, 2018. Ducker Decl. ¶ 2.

2. The Award

The Award found in favor of each Respondent as to Plaintiff's Sherman Act claim. Award §§ 10.3.1-10.3.9. With respect to the claim against Boswell, the Tribunal concluded that Plaintiff "failed to show, as alleged that (a) Boswell agreed with the [Supima] Association to destroy Tradeline; or (b) that the [Supima] Association held unique access to the alleged market; or (c) that any such conspiracy would have been likely to cause antitrust injury." Id. § 9.1.49. The Tribunal dismissed Plaintiff's Section 1 claim against Boswell on these grounds. *Id.*

The Tribunal also concluded that Plaintiff had failed to establish that Jess Smith Cotton conspired with the Supima Association to interfere with Plaintiff's license or that it participated in an agreement to achieve an unlawful objective. *Id.* §§ 9.2.4, 9.2.16. The Tribunal then dismissed Plaintiff's Section 1 claim against Jess Smith Cotton on these grounds. *Id.* § 9.2.16. The Tribunal also found in favor of the Supima Association as to the claims in which it was a Respondent. *Id.* § 9.3.1-9.5.6.

The Tribunal ordered that Plaintiff reimburse Respondents for the attorney's fees and costs each incurred in connection with the arbitration. *Id.* § 10.3.1. It determined that reimbursement was warranted for four principal reasons: (i) Respondents were "the successful parties on an overall basis" in the arbitration; (ii) the "elaborate conspiracy" allegations advanced by Plaintiff "were extremely serious" even though the claims themselves were "tenuous"; (iii) Plaintiff's claim that the Supima Association's breach of contract caused Plaintiff's financial demise was clearly lacking in merit and (iv) the expenses the Supima Association incurred in the arbitration could have been avoided if Plaintiff had accepted its settlement offer, which was made approximately three months before the arbitration hearing was held. *Id.* § 10.3.1-10.3.7.

The following chart summarizes the attorney's fees and costs awarded to Respondents by the Tribunal:

Respondent	**Attorney's Fees Awarded**	**Costs Awarded[3]**	**Total Sum Awarded[4]**
Jess Smith Cotton	$2,583,000	$942,000	$3,525,000
Boswell	$1,197,000	$932,000	$2,129,000
The Supima Association	$2,338,000	$942,000	$3,280,000
TOTALS	$6,118,000	$2,816,000	$8,934,000

Id. § 10.3.16.

The Award also ordered Plaintiff to pay $50,700 to the ICDR for the administrative fees and expenses it incurred in conducting the arbitration. *Id.* § 10.3.17.

III. Analysis

A. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention") is a multilateral treaty. It provides for "the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought." Convention, art. I(1), 21 U.S.T. 2517. Congress approved the Convention through the enactment of Chapter II of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 201-08. "The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk v. Alberto–Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

1. Subject Matter Jurisdiction and Venue

a) Legal Standards

In enacting Chapter II of the FAA, "Congress vested federal district courts with original jurisdiction over any action or proceeding 'falling under the Convention.'" *Ministry of Def. of Islamic Republic of Iran v. Gould Inc.*, 887 F.2d 1357, 1362 (9th Cir. 1989); *see* 9 U.S.C. § 203 ("An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States . . . shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.").

An arbitral award is within the Convention if it "aris[es] out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement" as long as the

[3] The costs awarded are comprised of expert and arbitration-related costs.
[4] These sums "shall bear compound interest at a rate of 6%, from the date of this Award, with half yearly rests, until payment." *Id.* § 11.1.1.

legal relationship bears some connection to "one or more foreign states." 9 U.S.C. § 202. Thus, "three basic requirements exist for jurisdiction to be conferred upon the district court: the award (1) must arise out of a legal relationship (2) which is commercial in nature and (3) which is not entirely domestic in scope." *Ministry of Def.*, 887 F.2d at 1362; *see, e.g.*, *id.* at 1362-66 (arbitral award entered in favor of the government of Iran and against an American corporation by the Iran-United States Claims Tribunal enforceable in a federal district court because the award arose out of the contract entered by the parties for the installation of military equipment); *LaPine v. Kyocera Corp.*, 2008 WL 2168914, at *3 (N.D. Cal. May 23, 2008) (arbitral award within the Convention because it arose out of the parties' "commercial" agreement regarding the plaintiff's reorganization and the defendant was a Japanese corporation with its principal place of business there). The United States imposes the additional requirement that the award be "made in the territory of another Contracting State." *Ministry of Def.*, 887 F.2d at 1362 (citing 21 U.S.T. 2566).

Venue is proper in an action to enforce an arbitral award falling under the Convention in

> any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

9 U.S.C. § 204.

b) Application

There is subject matter jurisdiction in this District to enforce the arbitration award because it "fall[s] under the Convention." 9 U.S.C. § 203. The award arises out of the "legal relationship" between Plaintiff and Respondents, two of whom are defendants in this action. At issue in this action is whether Respondents conspired to interfere with Plaintiff's rights under the Supima Licensing Agreement. That agreement is commercial in nature. *See ESCO Corp. v. Bradken Res. Pty. Ltd.*, 2011 WL 1625815, at *6 (D. Ore. Jan. 31, 2011) (arbitration award that resolved dispute between parties arising out of the parties' licensing agreement as to the plaintiff's patents and trademarks arose out of their commercial legal relationship). Plaintiff is an Indian company with its principal place of business there. Therefore, the award is "not entirely domestic in scope." *Ministry of Def.*, 887 F.2d at 1362. The arbitration was conducted in Toronto, Canada. Canada is signatory to the Convention. *Boston Telecomms. Grp., Inc. v. Deloitte Touche Tohmatsu*, 278 F. Supp. 2d 1041, 1045 (N.D. Cal. 2003).

Venue is also proper in this District based on the allegations in the Complaint. *See* Compl. ¶¶ 19-22 (alleging that the "key event that triggered the conspiracy" occurred in this District and that both Defendants transact business here).

For the foregoing reasons, the arbitration award will be confirmed unless there is a showing that it is unenforceable under the Convention.

2. Enforcement of an Arbitration Award

a) Legal Standards

Chapter II of the FAA provides that

> [w]ithin three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 207.

The seven grounds for denying the confirmation of an award are set forth in Article V of the Convention. *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1096 (9th Cir. 2011). They include that the party objecting to enforcement of the award did not receive proper notice of the arbitration proceedings or that the arbitrators committed substantial error during the proceedings. *Id.* at n.2. They "are construed narrowly, and the party opposing recognition or enforcement bears the burden of establishing that a defense applies." *Id.* at 1096; *see also Polimaster Ltd. v. RAE Sys., Inc.*, 623 F.3d 832, 836 (9th Cir. 2010) (a party seeking to avoid enforcement of an arbitral award under the Convention bears a "substantial" burden "because the public policy in favor of international arbitration is strong").

b) Application

Plaintiff does not challenge the Award on any of the grounds stated in Article V of the Convention. Instead, Plaintiff contends that the Court erred in granting Defendants' respective motions to compel arbitration. In support of this argument, it claims that the Prior Order misinterpreted and/or misapplied *Sun Valley* and the three Circuit Court cases identified by the Court that were addressed in supplemental briefing and the Prior Order. In reply, Defendants argue that Plaintiff's opposition to the Motion constitutes an untimely and procedurally improper motion for reconsideration of the Prior Order. Defendants also argue that, even if Plaintiff's opposition is construed as a procedurally proper motion for reconsideration, it fails on the merits.

Plaintiff's opposition does seek reconsideration of the Prior Order. Plaintiff has not presented any other bases for rejecting the confirmation of the award. The governing standards for a motion for reconsideration are set forth in Rule 59(e) and Local Rule 7-18. *See State Comp. Ins. Fund v. Drobot*, 192 F. Supp. 3d 1080, 1116 (C.D. Cal. 2016). Local Rule 7-18 provides:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c)

> a manifest showing of a failure to consider material facts presented to the Court before such decision.

C.D. Cal. R. 7-18. "No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." *Id.*

The arguments advanced by Plaintiff in opposition to the Motion parallel those it made in opposition to the Defendants' respective motions to compel arbitration and in the supplemental briefing submitted following the hearing on those motions. Indeed, Plaintiff devoted nearly two pages in its brief in opposition to Jess Smith Cotton's motion to distinguishing *Sun Valley*. Dkt. 30. Plaintiff also argued in its 10-page supplemental brief that none of the Circuit Court cases identified by the Court supported the conclusion reached in the Prior Order. Dkt. 56.

Plaintiff may not, through a request for reconsideration of the Prior Order, attempt to re-litigate matters that were previously presented, analyzed and rejected. This procedural rule has particular force where, as here, the merits of the matter have been resolved through an extensive and costly arbitration proceeding. *Cf. Fortune, Alsweet & Elridge, Inc. v. Daniel*, 724 F.2d 1355, 1357 (9th Cir. 1983) ("[A] party may not submit a claim to arbitration and then challenge the authority of the arbitrator to act after receiving an unfavorable result."). Plaintiff has not identified any new evidence[5] or any change in controlling law that shows that the Prior Order reflected clear error.

With respect to the claim of clear error, the Complaint 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

[5] Plaintiff's opposition could be interpreted to argue that new evidence was discovered during the arbitration that could not have been obtained by Plaintiff through reasonable diligence when the motions to compel arbitration were briefed and argued. Opposition at 6-7. Thus, it could be interpreted as a claim that Plaintiff learned for the first time at the "witness hearing" that was held in the arbitration, that the membership of the Supima Association numbered in the hundreds and did not include Jess Smith Cotton. From Plaintiff's perspective, the size of the Supima Association's membership is material because the reasoning in the Prior Order compels the conclusion that Plaintiff would be equitably estopped from resisting any member's reliance on the arbitration provision in the Supima Licensing Agreement "so long as a single theory (not even an independent claim) is [the member] colluded with Supima in any manner related to the License Agreement." *Id.* at 5. This argument is not persuasive. The reasoning in the Prior Order would not necessarily permit every member of the Supima Association to compel arbitration in a case involving similar antitrust allegations. The antitrust theory advanced in the Complaint derives directly from the Supima Licensing Agreement. Moreover, these facts were not first revealed in the arbitration. Jesse Curlee, the President of the Supima Association, testified at his December 10, 2015 deposition that the Supima Association has approximately 300 grower members and that Jess Smith Cotton is not one of them. *See* Ex. D to Supplemental Declaration of Edward J. Duckers ("Duckers Decl. II"), Dkt. 80-1 at 52:6-21 (Curlee Depo.); Compl. ¶ 65. This evidence was available to Plaintiff when it opposed the Defendants' respective motions to compel arbitration in January 2016. *See* Dkts. 28, 30. Moreover, counsel for Plaintiff clarified at the hearing that, to the extent its opposition is construed as a motion for reconsideration, Plaintiff seeks reconsideration on the ground that the Court committed clear error in the Prior Order, not that there has been a material change in the operative facts.

association." Compl. ¶ 172. Defendants allegedly conspired with the Supima Association to violate the procedural protection provided by Article VIII of the Supima Licensing Agreement by summarily revoking Plaintiff's license the day after it appeared on the ACEA default list. *Id.* ¶¶ 131, 135. Therefore, the resolution of Plaintiff's Sherman Act claim requires an interpretation and application of the Supima Licensing Agreement. Accordingly, there was no clear error in ordering Plaintiff to arbitrate its claims. *Sun Valley*, 231 Ariz. at 296-97 (a signatory to an agreement requiring arbitration may be compelled to arbitrate its claims against a non-signatory if the signatory's claims "make[] reference to or presume[] the existence of the written agreement" containing the arbitration provision because under such circumstances, "the signatory's claims arise out of and relate directly to the written agreement").

IV. Conclusion

For the reasons stated in this Order, the Motion is **GRANTED**. Counsel shall confer in an effort to agree on a form of judgment. On or before July 25, 2018, Defendants shall lodge a proposed judgment. Plaintiff shall file any objections to the proposed judgment in accordance with the Local Rules no later than August 1, 2018.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer ak