UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SUPERCOOLER TECHNOLOGIES, INC.,

Plaintiff,

v.

THE COCA-COLA COMPANY; METALFRIO SOLUTIONS, INC.; METALFRIO SOLUTIONS, S.A.; COFCO COCA-COLA BEVERAGES (BEIJING) LTD.; HISENSE CO. LTD; QINGDAO HISENSE COMMERCIAL COLD CHAIN CO. LTD.; HISENSE RONGSHENG (GUANGDONG) FREEZER CO. LTD.; HISENSE RONGSHENG (GUANGDONG) REFRIGERATOR CO. LTD.; HISENSE USA CORPORATION; SWIRE COCA-COLA LTD.; SWIRE COCA-COLA HK LTD.; SWIRE GUANGDONG COCA-COLA ZHANJIANG LTD.; and SWIRE PACIFIC HOLDINGS, INC.,

Defendants.

Case No. 6:23-cv-187-CEM-RMN

REPORT AND RECOMMENDATION

This cause comes before the Court for consideration without oral argument on Defendant The Coca-Cola Company's ("Coca-Cola") Motion to Compel Arbitration, Dkt. 103, filed August 2, 2023. Plaintiff SuperCooler

Technologies, Inc. ("SuperCooler"), opposes. Dkt. 132. After carefully considering the parties' arguments, I respectfully recommend the Court grant Coca-Cola's motion in part, direct the parties to arbitrate certain claims, and stay this case.

I. BACKGROUND

This lawsuit is what remains of Coca-Cola and SuperCooler's collaboration to make and market Arctic Coke—a bottled soda stored as a liquid that can be turned into a slushie at the touch of a button. Dkt. 87 ¶¶ 1–7. SuperCooler alleges its technology enables Arctic Coke. *Id.* In better times, the two companies executed several agreements, including a 2014 nondisclosure agreement, *id.* ¶ 55, contracts for specific deliverables, *see id.* ¶¶ 56–58 (describing statement of work #1), *id.* ¶¶ 64–65 (describing statement of work #2), a Master Services Agreement ("MSA"), *id.* ¶¶ 67–71 (original agreement), 96–99 (amended agreement), a 2016 licensing agreement, *id.* ¶ 93, and a 2017 note and note purchase agreement, *id.* ¶ 94. SuperCooler alleges that Coca-Cola breached these and other agreements by sharing SuperCooler's confidential and proprietary trade secrets with others and by applying for patents on the technology. *See, e.g.*, *id.* ¶¶ 126–29.

SuperCooler acknowledges the agreement that governs its relationship with Coca-Cola, the MSA, contains a clause that requires the parties to that agreement to arbitrate any disputes. *See, e.g.*, *id.* ¶ 7. Yet, in its Second

Amended Complaint, SuperCooler asserts thirty causes of action against Coca-Cola and twelve other companies. SuperCooler contends that it may bring these claims here because the agreement expressly exempts its claims from the arbitration requirement. *Id.* ¶ 7. Coca-Cola disagrees and moves to compel arbitration of SuperCooler's claims. Dkt. 103.

II. LEGAL STANDARDS

The Federal Arbitration Act ("FAA") governs the enforceability of arbitration provisions. *Hill v. Rent-A-Ctr., Inc.*, 398 F.3d 1286, 1288 (11th Cir. 2005). The FAA provides a "national policy favoring arbitration of claims that parties contract to settle in that manner." *Vaden v. Discover Bank*, 556 U.S. 49, 58 (2009) (quoting *Preston v. Ferrer*, 552 U.S. 346, 353 (2008)) (internal quotations omitted). Under the FAA, arbitration requirements in contracts "involving commerce" are "valid, irrevocable, and enforceable." 9 U.S.C. § 2.

Because the FAA enforces contract rights, the Supreme Court has said that the first principle flowing from it is that "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986) (quoting *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)). The second principle, which the Court says necessarily follows from the first, is that the question of arbitrability "is undeniably an issue for judicial determination." *Id.* at 649. And unless the parties "clearly and unmistakably provide otherwise,

the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." *Id.* (citing *Warrior & Gulf Navigation Co.*, 363 U.S. at 582–83).

Parties may also agree who gets to decide the question of arbitrability. *See U.S. Nutraceuticals, LLC v. Cyanotech Corp.*, 769 F.3d 1308, 1311 (11th Cir. 2014). And so, courts must first consider who decides the question of arbitrability. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010). If the parties to a contract delegate the authority to decide to the arbitrator, then "a court possess no power to decide the arbitrability issue." *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 139 S.Ct. 524, 529 (2019).

Furthermore, courts generally apply state contract law when considering these questions. *Am. Express Fin. Advisors, Inc. v. Makarewicz*, 122 F.3d 936, 940 (11th Cir. 1997) (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)).

III. ANALYSIS

Both SuperCooler and Coca-Cola agree that the MSA contains an enforceable arbitration requirement. But they disagree over who gets to decide the question of arbitrability, the scope of the arbitration requirement, and whether SuperCooler's claims fall within that requirement. I consider each dispute in turn and then make a recommendation regarding the disposition of this case.

A. Does The Arbitration Provision Clearly And Unmistakably Delegate The Question Of Arbitrability?

The Court must first consider whether it or the arbitrator decides the question of arbitrability. Coca-Cola argues that the arbitrator must decide the scope of arbitration because the agreement contains a "clear and unmistakable" delegation clause stating that the gateway decision of arbitrability is for the arbitrator, not the Court. Dkt. 103 at 10–13. Coca-Cola says that the agreement expressly incorporates the American Arbitration Association's Consumer Arbitration Rules and those Rules declare that this question is under the jurisdiction of the arbitrator. *Id.* at 11; *see also* Dkt. 103-6 at 3. SuperCooler responds, in part, by arguing that the agreement does not "clearly and unmistakably" delegate arbitrability to the arbitrator and thus the question is left for the Court to decide. Dkt. 132 at 6–10.

The master services agreement is based on New York law. Dkt. 103-2 at 13. New York law "generally treats arbitrability as an issue for judicial determination unless the parties clearly and unmistakably provide otherwise." *NASDAQ OMX Grp., Inc. v. UBS Secs., LLC*, 770 F.3d 1010, 1031 (2d Cir. 2014) (quotation marks and citation omitted). And cases applying New York law have found "where a broad arbitration clause is subject to a qualifying provision that at least arguably covers the present dispute," the "clear and unmistakable" requirement is not satisfied. *Id.* (citing *Katz v. Feinberg*, 290

F.3d 95, 97 (2d Cir. 2002) (finding that the presence of both a broadly worded arbitration clause and a more specific clause assigning certain decisions to another decision maker creates ambiguity, which "requires [the court] to assign questions of arbitrability to the district court, not the arbitrator")).

The arbitration requirement is found in Article XV of the master services agreement. Dkt. 103-2 at 13. That provision provides in part:

> Any dispute arising under or related to this Agreement will be resolved by a final and binding arbitration in the English language in accordance with the Commercial Arbitration Rules ("Rules") of the American Arbitration Association ("AAA"), which shall administer the arbitration, with the losing party paying all costs for the arbitration. The place of arbitration shall be New York, New York, United States of America. The arbitration tribunal shall be comprised of one arbitrator selected by each party and a chairperson selected by the party-approved arbitrators, all in accordance with the Rules. Judgment upon any award rendered by the arbitration tribunal may be entered in any court having competent jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and or order of enforcement, as the case may be. *Notwithstanding anything to the contrary in this Agreement, either party may always apply to a court of competent jurisdiction for an injunction or any other legal or equitable relief in regards to a violation of the confidentiality, intellectual property license, or limited-use provisions of this Agreement.* This Article shall survive expiration or termination of this Agreement for any reason.

Id. (emphasis added). The first sentence of the quote imposes a duty on Coca-Cola and SuperCooler to arbitrate any dispute under or related to the MSA. *See id.* The duty imposed broadly encompasses "[a]ny dispute." *See Litton Fin. Printing Div., a Div. of Litton Bus. Sys., Inc. v. NLRB*, 501 U.S. 190, 193 (1991)

(describing a similarly "broad arbitration provision"); *Contec Corp. v. Remote Sol. Co.*, 398 F.3d 205, 208 (2d Cir. 2005) (same).

But the duty imposed by the first sentence is qualified by the fifth. Beginning with the phrase "[n]otwithstanding anything to the contrary in this Agreement," the fifth sentence carves out certain disputes from the broad duty to arbitrate imposed by the first sentence. Dkt. 103-2 at 13. This is so because the use of a "notwithstanding clause clearly signals the drafter's intention that the provisions of the notwithstanding section override conflicting provisions of any other section." *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (citing *Shomberg v. United States*, 348 U.S. 540, 547–548 (1955)) (cleaned up).

Neither the arbitration requirement nor the carve-out provision expressly assign the authority to decide the question of arbitrability.[1] The

[1] Coca-Cola attempts to side-step this omission by arguing the authority is delegated in the arbitration rules incorporated by reference into the agreement. That argument is unconvincing. The carve-out provision contemplates that certain disputes can be decided by a court in the first instance. Coca-Cola's incorporation-by-reference argument makes the carve-out provision mere surplusage because, as Coca-Cola tries here, a court presented with any dispute would be required to defer the question of arbitrability for every claim. Courts, including those in New York, frown upon adopting interpretations of contracts in this way. *Corhill Corp. v. S. D. Plants, Inc.*, 9 N.Y.2d 595, 599 (1961) (noting the rule against surplusage is a "cardinal rule of construction"). And even if Coca-Cola's interpretation were viable, the agreement does not delegate the authority to decide arbitrability clearly and unmistakably, as required by New York law. *See, e.g.*, *GateGuard, Inc. v. MVI Sys. LLC*, No. 19 CIV 2472 (JPC), 2021 WL 4443256, at *6 (S.D.N.Y. Sept. 28, 2021) (collecting cases that found contracts containing equitable relief

arbitration requirement is directed to disputes generally. And although the carve-out provision focuses on violations of specific provisions of the agreement, it unambiguously exempts disputes involving those violations from the arbitration requirement imposed in the first sentence. In sum, when read in context, Article XV imposes a general duty to arbitrate on the parties to the agreement that is expressly qualified by a carve-out provision.

But even if that were not so, the juxtaposition of a broad arbitration requirement and a carve-out provision creates sufficient ambiguity to find that the parties to the contract did not clearly and unmistakably delegate the authority to decide arbitrability. The most that can be said about these juxtaposed provisions is that the agreement is ambiguous. And so, Coca-Cola has not satisfied its burden. *See NASDAQ OMX Grp., Inc.*, 770 F.3d at 1031; *see also DDK Hotels, LLC v. Williams-Sonoma, Inc.*, 6 F.4th 308, 318 (2d Cir. 2021) ("Incorporation of such rules into an arbitration agreement does not, *per se*, demonstrate clear and unmistakable evidence of the parties' intent to delegate threshold questions of arbitrability to the arbitrator where other aspects of the contract create ambiguity as to the parties' intent.").

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provisions covering all claims or actions seeking equitable relief carve-out claims and actions from arbitration).

I therefore respectfully recommend the Court find that Coca-Cola has not carried its burden of establishing clear and unmistakable evidence of the parties' intent to delegate the question of arbitrability to the arbitrator.

B. What Did The Parties Agree To Arbitrate?

Next, the Court must construe the scope of the arbitration requirement. As explained above, the first sentence of Article XV imposes a broad duty on the parties to the contract, and the fifth sentence carves out a range of disputes from that duty. Coca-Cola characterizes the carve-out provision as a simple "equitable relief clause." Dkt. 103 at 12. SuperCooler takes a different view, arguing that the carve-out provision specifically exempts the types of claims that it asserts here. Dkt. 132 at 13.

As SuperCooler emphasizes in its brief, the carve-out provision is not an equitable relief clause and Coca-Cola's efforts to analogize it to one are unpersuasive. To start, the language used in the carve-out provision plainly encompasses more than just equitable relief. Dkt. 103-2 at 13. By referring to both legal and equitable relief, the drafters of the carve-out provision seem to intend it to cover the waterfront—that is, exempt from arbitration all claims that involve certain enumerated violations.[2]

[2] The use of "legal or equitable relief" in the carve-out provision introduces a slight wrinkle. The drafters seem to have overlooked the ambiguity created when one overlays those historical terms on the modern procedural practices of federal courts. *See, e.g.*, *Gulfstream Aerospace Corp. v. Mayacamas Corp.*,

In this way, the carve-out provision is distinguishable from the equitable relief clause in *GateGuard, Inc. v. MVI Sys. LLC*. There, the Court held that a clause allowing one party to "seek injunctive or other equitable relief" in court served only as a declaration of existing legal rights that allowed a party to preserve the status quo during the arbitration. 2021 WL 4443256 at *7. In Coca-Cola's view, the clause in *GateGuard* and in this case are similar because the clauses serve the same purpose: make injunctive relief available to parties in aid of arbitration. Dkt. 103 at 19–20. Not so. Unlike the clause in *GateGuard*, the natural reading of the carve-out provision here embraces all claims that involve the enumerated violations.

In a related argument, Coca-Cola contends its reading of Article XV is supported by Article XVI of the MSA. Dkt. 103 at 20–21. In Article XVI, the parties agree that, if one party must seek preliminary injunctive relief, they would be entitled to such relief without posting a bond. Dkt. 103-2 at 14. The parties also agree that the arbitrator "will determine any permanent injunction or restraining order included within the final arbitral award." *Id.* According to Coca-Cola, Article XVI provides proof that the carve-out provision

485 U.S. 271, 284 (1988) (remarking that "[a]ctions for declaratory judgments are neither legal nor equitable" in the course criticizing a doctrine that "presupposed two different systems of justice administered by separate tribunals"). In any event, the most natural reading of this phrase is that it refers to claims seeking all forms of relief.

is an equitable relief provision because Article XVI suggests that courts cannot grant permanent injunctive relief outside of arbitration. Dkt 103 at 20–21.

That argument does not carry the water that Coca-Cola believes. Though Article XVI may contemplate a party seeking preliminary injunctive relief in court to further arbitration, it does not exclude alternative interpretations. And SuperCooler offers a plausible alternative interpretation—the parties intended to exclude certain disputes from the arbitration requirement altogether.

Coca-Cola then argues that SuperCooler's interpretation of the carve-out provision is so broad that it renders the arbitration requirement nugatory. Dkt. 103 at 21. But, as SuperCooler points out in response, that argument is mere hyperbole. Dkt. 132 at 11–12. Some parts of the MSA are subject to the arbitration requirement, some parts are not.

At bottom, I respectfully recommend the Court construe Article XV to exempt certain claims from the arbitration requirement, namely all claims involving a dispute based on "a violation of the confidentiality, intellectual property license, or limited-use provisions" of the master services agreement.[3]

[3] When construing SuperCooler's claims, the Court should be mindful that the Second Circuit has receded from the two-step framework that it had developed to decide whether a court should compel arbitration. *See Loc. Union 97, Int'l Bhd. of Elec. Workers, AFL-CIO v. Niagara Mohawk Power Corp.*, 67 F.4th 107, 113 (2d Cir. 2023) (acknowledging that Second Circuit cases applying a presumption of arbitrability "cannot be good law" to the extent those decisions

C. Are SuperCooler's Claims Arbitrable?

SuperCooler's Second Amended Complaint contains 30 counts, 19 of which are alleged against Coca-Cola. *See* Dkt. 87 at 83–183. The counts brought against Coca-Cola are I through XV and XXIV through XXVII.

Count I (breach of master services agreement's confidentiality provisions, Dkt. 87 ¶¶ 180–194); Count II (breach of amendment to the master services agreement that grants licensing rights to Coca-Cola, *see id.* ¶¶ 195–201); Count V (breach of fiduciary duty for failure to abide by confidentiality provisions, *see id.* ¶¶ 214–24); and Counts VI and VII (misappropriation of trade secrets based on alleged violations of confidentiality and license provisions of the master services agreement, *see id.* ¶¶ 225–63) all fall within the "confidentiality" or "intellectual property licensing" provisions of the MSA. Consequently, under the carve-out provision, these claims are not arbitrable.

Count III is for beach of the 2018 Licensing Agreement. Dkt. 87 ¶¶ 202–7. It therefore does not arise under or relate to the MSA, and the claim is not arbitrable. But even assuming this count does "relate to" the MSA, it would

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are inconsistent with the Supreme Court's holding in *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287 (2010)).

fall within the "intellectual property licensing" language of the carve-out provision and is therefore not arbitrable.[4]

Count IV is for breach of the parties' Note and Note Purchase Agreement. Dkt. 87 ¶¶ 208–213. According to SuperCooler, under the Note and Note Purchase Agreement, Coca-Cola loaned SuperCooler about $3 million "to perform more work . . . under the [MSA]." *See id.* ¶ 210. Based on this allegation, I find that this Count arises under or relates to the MSA. It is therefore arbitrable.

Counts VIII and IX assert correction of inventorship claims on patents issued on applications that were filed during the project and based on disclosures that SuperCooler alleges were confidential under the MSA. Dkt. 87 ¶¶ 264–277. Though correction of inventorship claims may be arbitrable if the parties agree to such a requirement, *see, e.g.*, *Venture Indus. Corp. v. Autoliv ASP, Inc.*, 457 F.3d 1322, 1324 (Fed. Cir. 2006) (recounting that the district court had referred inventorship claims, among others, to arbitration), the parties' maters services agreement here carves out equitable claims for relief regarding licensing issues from the arbitration clause. I find that the correction of inventorship claims brought in this lawsuit are based on alleged violations

[4] Coca-Cola argues that because the 2018 licensing agreement expressly incorporates the master services agreement, it "relates to" that agreement for purposes of the arbitration provision. Dkt. 103 at 15. I do not find that argument persuasive.

of the licensing, confidentiality, or the limited-use provisions of the MSA. The claims are not arbitrable.

Count X consists of claims for fraud in the inducement of the amendment to the MSA, the 2017 Note, and the 2017 Note Purchase Agreement. Dkt. 87 ¶¶ 278–288. As indicated above, SuperCooler alleges that the Note and Note Purchase Agreement were executed so that SuperCooler could "perform more work . . . under the [MSA]." *See id.* ¶ 210. This claim then, like Count IV, "relates to" the MSA. As such, it is arbitrable.

Count XI (unjust enrichment, Dkt. 87 ¶¶ 289–295) and Count XII (promissory estoppel, *see id.* ¶¶ 296–302) both fall within the scope of the arbitration requirement. Count XI's unjust enrichment claim "relates to" the work performed under the MSA in that SuperCooler alleges that Coca-Cola "voluntarily and knowingly accepted the benefits" SuperCooler afforded Coca-Cola in furtherance of that agreement. *Id.* ¶ 293. Similarly, Count XII's promissory estoppel claim turns on the execution of the MSA. SuperCooler alleges it acted pursuant to the MSA due to its reliance on Coca-Cola's promises during the formation of the contract. *See id.* ¶ 299. It also cannot be said that the current allegations of unjust enrichment and promissory estoppel are "in regards to" violations of the confidentiality, intellectual property license, or limited use provisions of the MSA. *See id.* ¶ 290 (allegations include (i) loaning Defendant equipment and demonstration models; (ii) training Coca-

Cola personnel to use the equipment; (iii) providing on-site consultation services; (iv) providing engineering services to the equipment; (v) developing and providing training materials for the equipment; (vi) assisting with problems on MetalFrio-manufactured equipment; and (vii) Coca-Cola's ability to market itself). For these reasons, I conclude the claims set forth in Counts XI and XII are arbitrable.

Count XIII asserts a claim for declaratory relief. Dkt. 87 ¶¶ 303–07. SuperCooler requests declaratory relief regarding its trade secrets and whether Coca-Cola "ultimately claim[ed] SuperCooler's technology as its own." *Id.* ¶ 305. This claim relates to the intellectual property license and limited-use provisions of the MSA. For this reason, the claims in Count XIII are not arbitrable.

In Count XIV, SuperCooler claims Coca-Cola violated Florida's Deceptive and Unfair Trade Practices Act when (1) Coca-Cola disclosed SuperCooler's confidential technology to others, (2) Coca-Cola reverse engineered SuperCooler's technology, and (3) Coca-Cola cut SuperCooler out of the manufacturing process. Dkt. 87 ¶¶ 308–315. This count also falls within the carve-out provision. And so, it is not arbitrable.

Next, in Count XV, SuperCooler claims Coca-Cola violated the Lanham Act. Dkt. 87 ¶¶ 316–321. This count can be reasonably said to fall within the carve-out provision as it relates to Coca-Cola's alleged misuse of the

intellectual property license granted by the MSA. For this reason, the claims in this count are not arbitrable.

And finally, Counts XXIV through XXVII set forth civil conspiracy claims against Coca-Cola and other Defendants. Dkt. 87 ¶¶ 422–449. The gist of each count is that Coca-Cola's conspired with other manufacturers, unlawfully shared SuperCooler's confidential technology, and conspired with those manufactures to make products incorporating SuperCooler's confidential technology. *See id.* ¶¶ 424, 431, 438, 445. Because these claims are "in regards to" violations of the intellectual property license or limited-use provisions of the MSA, they are not arbitrable.

In sum, I respectfully recommend that the Court find the claims asserted in Counts IV, X, XI, and XII are subject to the MSA's arbitration requirement and that the claims in the remaining 15 counts asserted against Coca-Cola are not.

D. The Court Should Exercise Its Discretion To Stay This Case.

Because some of SuperCooler's claims must be sent to arbitration, the Court must consider whether to proceed here on its other claims. Whether to stay court proceedings pending the resolution of arbitrable claims is a matter left to the sound discretion of the Court.[5] *See Landis v. N. Am. Co.*, 299 U.S.

[5] The Supreme court has also noted that "[i]n some cases . . . it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the

248, 254–55 (1936); *see also Klay v. All Defendants*, 389 F.3d 1191, 1204 (11th Cir. 2004) ("When confronted with litigants advancing both arbitrable and nonarbitrable claims . . . courts have discretion to stay nonarbitrable claims."). Though the decision is discretionary, the "heavy presumption should be that the arbitration and the lawsuit will each proceed in its normal course." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 225 (1985) (White, J., concurring). Thus, courts generally refuse to stay non-arbitrable claims "when it is feasible to proceed with the litigation." *Klay*, 389 F.3d at 1204. "Crucial to this determination [whether the nonarbitrable claims should proceed] is whether arbitrable claims predominate or whether the outcome of the nonarbitrable claims will depend on the arbitrator's decision." *Id.*

One way to measure predominance is to determine whether the arbitrable and nonarbitrable claims rely on the same factual allegations. *See Variable Annuity Life Ins. Co. v. Laferrera*, 680 F. App'x 880, 884 (11th Cir. 2017). SuperCooler alleges that every arbitrable claim is based on the same

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arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 21 n.23 (1983). Furthermore, "a court's discretion to stay litigation pending related arbitration is not limited by a requirement that the litigating parties all be signatories to the relevant arbitration agreement." *Quash Seltzer, LLC v. Pepsico, Inc.*, No. 21-CV-60191, 2021 WL 1963639, at *5 (S.D. Fla. May 17, 2021). Here, SuperCooler's claims against the Defendants who are not signatories to the MSA are all based on factual allegations involving Coca-Cola's alleged breaches of the agreement. For this reason, I respectfully recommend that the most just, speedy, and inexpensive way to resolve this case is to resolve the claims against Coca-Cola first.

factual allegations as every nonarbitrable claim. *Compare* Dkt. 87 ¶¶ 208, 278, 289, 296 *with id.* ¶¶ 180, 195, 202, 214, 225, 245, 264, 271, 303, 308, 316, 322, 335, 347, 360, 372, 385, 397, 422, 429, 436, 443, 450, 456, 461. The allegations in the operative complaint therefore provide strong evidence that the arbitrable claims predominate over the nonarbitrable claims. *See Laferrera*, 680 F. App'x at 884 (concluding the district court abused its discretion when it refused to stay nonarbitrable claims "based on the exact same factual allegations" as arbitrable claims).

But even putting aside the way SuperCooler framed its claims, it is plainly apparent that if this lawsuit were to procced, a decision on the arbitrable claims in Counts IV, X, XI, and XII could be inconsistent with a decision on the nonarbitrable claims. This is so because the contract and quasi-contract claims for beach of the Note and Note Purchase Agreement, fraud in the inducement, unjust enrichment, and promissory estoppel overlap in facts and potential findings with the nonarbitrable claims in such a way that it would be impossible for the Court to rule on the confidentiality, misappropriation, and other claims related to the MSA without fear that the arbitration would result in inconsistent rulings about the formation and validity of the contracts at issue. *See Laferrera*, 680 F. App'x at 884–85 (finding abuse of discretion where district court did not stay claims pending arbitration where going forward on claims "would give rise to the possibility of inconsistent

results" and the "outcome of the nonarbitrable claims will depend upon the arbitrator's decision"); *see also Quash Seltzer*, 2021 WL 1963639, at *5 (granting a stay pending litigation of some claims at issue because "all of [Plaintiff's] claims turn on an interpretation of [Defendant's] rights under the [relevant contractual agreement]—a task [the parties] have delegated to the arbitration panel").

Because the outcome of the arbitrable claims may affect rulings and findings of the non-arbitrable claims, I respectfully recommend that the Court stay the nonarbitrable claims asserted in this case until the completion of the mandatory arbitration proceedings.

IV. RECOMMENDATION

Accordingly, I respectfully **RECOMMEND**:

1. Defendant The Coca-Cola Company's Motion to Compel Arbitration (Dkt. 103) be **GRANTED IN PART**;

2. The Court should compel arbitration of Count IV; X; XI; and XII only;

3. The rest of the case should be **STAYED** case pending the outcome of the arbitration; and

4. The Court should **DENY** the remainder of Coca-Cola's Motion.

NOTICE TO PARTIES

"Within 14 days after being served with a copy of [a report and recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). "A party may respond to another party's objections within 14 days after being served with a copy." *Id.* A party's failure to serve and file specific objections to the proposed findings and recommendations alters review by the district judge and the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no specific objection was made. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1.

ENTERED in Orlando, Florida, on October 27, 2023.

ROBERT M. NORWAY
United States Magistrate Judge

Copies to:

Hon. Carlos E. Mendoza

Counsel of Record