UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AVID HOLDINGS, LTD.; HANNA CARFIELD; and JONATHAN CARFIELD,

Plaintiffs,

v.

ALEX KWON; ZHAO YU; DENTONS DURHAM JONES PINEGAR P.C.; DENTONS US LLP; and BEIJING DACHENG LAW OFFICES, LLP,

Defendants.

Case No. 2:24-cv-08196-SPG-PVC

ORDER GRANTING DEFENDANT ALEX KWON'S MOTION TO COMPEL ARBITRATION [ECF No. 38], DENYING PLAINTIFFS' MOTION TO COMPEL QUESTIONS OF ARBITRABILITY TO THE ARBITRATOR [ECF NO. 46], AND GRANTING DENTONS DEFENDANTS' MOTION TO DISMISS [ECF NO. 41]

Before the Court is: (1) the Motion to Compel Arbitration (ECF No. 38 ("Kwon's MTCA")) filed by Defendant Alex Kwon; (2) the Motion to Compel Questions of Arbitrability to the Arbitrator (ECF No. 46 ("Plaintiffs' MTCA")) filed by Plaintiffs Avid Holdings, Ltd., Hanna Carfield, and Jonathan Carfield (together, "Plaintiffs"); and (3) the Motion to Dismiss the First Amended Complaint and Motion to Strike (Anti-SLAPP) (ECF No. 41 ("Dentons' Motion")) filed by Defendants Dentons Durham Jones Pinegar P.C. ("DDJP"), and Dentons US LLP ("Dentons US") (together, "Dentons Defendants"). The Court finds these matters suitable for resolution without oral argument. Fed. R. Civ.

P. 78(b); C.D. Cal. L.R. 7-15. Having considered the parties' submissions, the relevant law, and the record in this case, the Court GRANTS Kwon's MTCA, DENIES Plaintiffs' MTCA, and GRANTS the Dentons' Motion.

I. BACKGROUND

A. Factual Background

This dispute results from a soured business relationship principally between two entities and their respective owners. *See* (ECF No. 37 ("First Amended Complaint" or "FAC")). On one side of the dispute is a vaping device manufacturer, Plaintiff Avid Holdings Ltd. ("Avid"); its founder, Plaintiff Jonathan Carfield; and his wife, Plaintiff Hanna Carfield (the "Carfields," and together with "Avid," "Plaintiffs"). On the other side of the dispute is Defendant Alex Kwon, Chief Executive Officer and an owner of non-party Next Level Ventures, LLC ("NLV"), an entity that served as Avid's exclusive distributer. (*Id.* ¶¶ 2–4, 44, 61). Also named as a defendant is former agent and employee of Avid and the Carfields, Defendant Zhao Yu, as well as NLV's counsel of record in a prior, separate litigation, Defendant Dentons Durham Jones Pinegar, P.C. ("DDJP"), and its affiliate, Defendant Dentons US LLP ("Dentons US," and together with DDJP, the "Dentons Defendants").[1] (*Id.*).

The First Amended Complaint alleges Plaintiffs own the brand and designs for particular "AVD" branded vape cartridges. (*Id.* ¶ 40). On January 1, 2019, Avid's predecessor-in-interest and NLV entered into an Exclusive Distribution Agreement ("EDA"). (*Id.* ¶¶ 56, 59, 61–62, Ex. A ("EDA")). As the manager of NLV, Alex Kwon signed the agreement on behalf of NLV. *See* (EDA). The EDA granted NLV the exclusive right to distribute certain of Avid's vape products designed by Avid and Mrs. Carfield, required NLV to purchase per quarter a minimum volume of Avid's vape products for a

[1] The lawsuit also names as a defendant Beijing Dacheng Law Offices, LLP, and alleges that firm represented Defendant Yu. *See* (FAC ¶¶ 30, 147). To date, however, no proof of service has been filed for Beijing Dacheng Law Officers, LLP, and the firm has not appeared in this action.

specified price according to a schedule of "Minimum Distribution Targets," and granted NLV a "limited license to certain intellectual property" related to the vape products. (*Id.* ¶ 62).

The FAC alleges that, beginning in 2019, NLV regularly failed to meet the Minimum Distribution Targets and payment requirements set forth in the EDA. (*Id.* ¶¶ 65–67). The factory Avid used to manufacture its products required certain minimum orders to remain available to Avid for manufacturing, and the EDA had no provision allowing NLV to carry a debt balance owed to Avid. (*Id.*). According to the FAC, because of NLV's alleged underpayments, Avid barely had "enough money to pay the factory and [Avid's] own staff for monthly operating overhead." (*Id.* ¶¶ 67, 70). Notwithstanding, Avid continued to ship all pending orders for vape cartridges to NLV, providing NLV with what Plaintiffs describe as "unsecured, unilateral credit." (*Id.* ¶ 81). During this period of underpayment, NLV allegedly had "upwards of $3 million in cash on hand" and Defendant Kwon was regularly making distributions to himself from NLV "at an annual rate of approximately $2 million." (*Id.* ¶ 77). Thus, the FAC posits NLV could have afforded to make regular payments to Avid. (*Id.*).

Plaintiffs allege that, unbeknownst to them, during this time of nonpayment, NLV and Defendant Kwon, in coordination with Defendant Yu and the Dentons Defendants, allegedly planned to squeeze Avid and the Carfields out of the business enterprise for the vape devices. (*Id.* ¶¶ 73, 96). In particular, the FAC alleges that Defendant Yu acquired a controlling interest in the factory where Avid manufactured the vape devices, and NLV entered into a Joint Venture and Cooperation Agreement with the holding company that Defendant Yu used to control this factory. *See* (*id.* ¶¶ 72–74). The FAC contends that NLV then "purported to purchase" Avid's debt from the factories—debt that Plaintiffs allege was caused by NLV's failure to pay its debt owed to Avid—effectively squeezing out Avid and the Carfields from the business enterprise "by manufacturing a crisis." *See* (*id.* ¶¶ 74, 96).

Additionally, the FAC alleges that, around this same time NLV and Defendant Kwon proposed to Avid a merger on unfavorable terms. (*Id.* ¶¶ 76–78). Avid ultimately rejected the merger proposal, but the FAC alleges Plaintiffs did not know at that time that Defendant Yu had acquired the factory, or that NLV and had acquired Avid's debt directly from the factory. (*Id.* ¶¶ 72, 76, 96).

The FAC further alleges that Defendant Kwon and Yu also sought control over Avid and the Carfields by usurping the AVD brand. (*Id.* ¶ 99). During merger discussions, Defendant Kwon allegedly wrongly insisted that he owned the mark, "AVD," and was a founder of the AVD brand. (*Id.* ¶¶ 76, 79). Defendant Kwon also allegedly publicly held himself out as the "Co-Founder of AVD" in online posts and interviews. (*Id.* ¶ 100). The FAC also alleges that Defendant Kwon attempted to obtain federal trademark registrations for trademarks already owned by Avid and the Carfields, through filing in December 2020 an allegedly false trademark application for "Advanced Vapor Devices," and claiming to own the mark. (*Id.* ¶¶ 104, 105). Such claims, the FAC alleges, were clearly foreclosed by the scope of the EDA, which granted NLV only a limited license to use such a mark. *See* (*id.* ¶¶ 103, 104).

According to the FAC, throughout this time of alleged usurpation, Defendant Yu was improperly accessing Mr. Carfield's password-protected laptop to review "files, confidential information, and trade secrets" belonging to Avid and the Carfields. (*Id.* ¶¶ 102, 138). Per the FAC, Defendant Yu shared this confidential information with the Dentons Defendants, as well as his alleged "secret partner[s]" Defendant Kwon and NLV, and deleted emails and internal Avid communications. (*Id.* ¶ 106). Defendant Yu "set aside a large fund for litigation," with DDJP's involvement, to aggressively litigate Defendant Yu and Defendant Kwon's ownership claims for the enterprise against Avid and the Carfields. (*Id.* ¶¶ 108, 109).

On October 5, 2021, NLV, represented by DDJP, initiated an arbitration against Avid under the EDA ("Arbitration I"). (*Id.* ¶ 114). On October 11, 2021, the FAC alleges that Defendant Yu, "interfered" with Avid's relationship with its counsel in Arbitration I

by sending an email stating that Defendant Yu was the true owner of Avid. (*Id.* ¶ 124). According to the FAC, DDJP was the "ghostwrit[er]" of Defendant Yu's email. (*Id.* ¶ 125). As a result of the letter, Avid's counsel withdrew from representation in Arbitration I, and Avid defaulted in the arbitration. (*Id.* ¶ 126). In April 2022, the arbitrator entered a final award in favor of NLV against Avid. (*Id.* ¶ 128). A federal district court confirmed the award and, later, the Ninth Circuit affirmed the arbitrator's award. *See* (*id.* ¶ 132; ECF Nos. 41-4, 41-5, and 41-7). The FAC alleges that, throughout Arbitration I, Defendant Yu continued to access the Carfields' email accounts so that the Carfields did not receive notice of all the pleadings in Arbitration I. (*Id.* ¶¶ 126, 129, 130).

On August 9, 2022, NLV, represented by DDJP, brought a lawsuit in Delaware Chancery Court against the Carfields and a different Avid-related entity, AVID USA Technologies, LLC ("Delaware Action"). (*Id.* ¶ 134). During the Delaware Action, NLV, on September 19, 2022, served a subpoena *duces tecum* through the Dentons Defendants, on Defendant Yu, who was a third-party in the Delaware Action, while Defendant Yu was staying in a hotel in Santa Monica, California. (*Id.* ¶ 136). The FAC alleges that, although Defendant Yu resides in China, he "just happened to be in California on a specific day, and [NLV and the Denton Defendants] happened to know exactly where he would be and when" to serve him with the subpoena. (*Id.* ¶ 137). In response to the subpoena, Defendant Yu "immediately produced to [NLV] the complete contents of Mr. Carfield's password-protected laptop, which was not expressly sought in the subpoena" and which Defendant Yu had in his possession. (*Id.* ¶ 138). The FAC alleges that this overproduction "was no accident." (*Id.*).

The Dentons Defendants then used e-discovery tools to extract "nearly two years of email communications" from the laptop provided by Defendant Yu, which would have required Defendant Yu and the Dentons Defendants to access "password-protected email accounts, Google accounts, and other online management and communications platforms" allegedly owned by Mr. Carfield. (*Id.*). The Dentons Defendants allegedly "spent several days" reviewing material from the laptop, allegedly accessing attorney-client

communications belonging to Avid and the Carfields and marital communications between the Carfields. (*Id.* ¶ 139). The FAC alleges that the Dentons Defendants then "intentionally deleted digital footprints" of their extraction to "conceal their misconduct." (*Id.* ¶ 142). The FAC refers to the subpoena served on Defendant Yu as a "notional legal process instrument" that was "used as a pretext to take Mr. Carfield's entire email account and the contents of other online accounts belonging to Mr. Carfield," including to "take privileged and confidential information." (*Id.* ¶¶ 149, 150).

Additionally, the FAC alleges that the Carfields were notified of the subpoena after documents were produced in response to it. (*Id.* ¶ 151). After Avid moved for a protective order related to the documents from the laptop, the court in the Delaware Action expressed concern regarding "how [Defendant Yu] obtained the documents off the laptop and cloud drive," and noted that "Plaintiff's counsel has been unable to explain to me or defendant how" Defendant Yu accessed the material." (*Id.* ¶ 156; ECF No. 41-12 ("Delaware Chancery Court Order") at 9). Nevertheless, the court in the Delaware Action allowed NLV to use certain documents obtained from the laptop for limited purposes in upcoming depositions in the Delaware Action. (Delaware Chancery Court Order at 9).

Based on the allegations described above, the FAC asserts twelve claims against Defendants: (1) tortious interference with a contractual relationship or business expectancy, brought against Defendants Kwon, Yu, and DDJP only (FAC ¶¶ 163–186 ("Claim 1")); (2) tortious interference with a contractual relationship or business expectancy, brought against Defendant Kwon and the Dentons Defendants (*id.* ¶¶ 187–197 ("Claim 2")); (3) unfair competition, trademark infringement, and false association under the Lanham Act, brought against Defendant Kwon only (*id.* ¶¶ 198–219 ("Claim 3")); (4) false or fraudulent trademark registration under 15 U.S.C. § 1520, brought against Defendant Kwon only (*id.* ¶¶ 220–227 ("Claim 4")); (5) violation of the Computer Fraud and Abuse Act, brought against all Defendants (*id.* ¶¶ 228–240 ("Claim 5")); (6) violation of the California Comprehensive Computer Data Access and Fraud Act, brought against all Defendants (*id.* ¶¶ 241–250 ("Claim 6")); (7) trespass to chattels against all Defendants

(*id.* ¶¶ 251–260 ("Claim 7")); (8) violation of Title II of the Electronic Communications Privacy Act, brought against all Defendants (*id.* ¶¶ 261–267 ("Claim 8")); (9) misappropriation/conversion, brought against Defendants Kwon and Yu (*id.* ¶¶ 268–277 ("Claim 9")); (10) defamation, brought against Defendant Kwon only (*id.* ¶¶ 278–286 ("Claim 10")); (11) civil conspiracy, brought against Defendants Kwon and Yu only (*id.* ¶¶ 287–299 ("Claim 11")); and (12) invasion of privacy and intrusion into private matters against Dentons Defendants (*id.* ¶¶ 300–309 ("Claim 12")).

B. Procedural History

This action was filed on September 24, 2024. (ECF No. 1). On December 16, 2024, Plaintiffs filed the FAC. On December 19, 2024, Defendant Kwon filed the Motion to Compel Arbitration. (Kwon's MTCA). On December 30, 2024, the Dentons Defendants filed a Motion to Dismiss First Amended Complaint and Motion to Strike (Anti-SLAPP). (Dentons' Motion). On January 9, 2025, Plaintiffs filed a Motion to Stay Case Pending Arbitrator Determination of Arbitrability. (Plaintiffs' MTCA). All motions are fully briefed. *See* (ECF No. 45 ("Plaintiffs' Opp. to Kwon's MTCA"); ECF No. 54 ("Kwon's Opp. to Plaintiffs' MTCA"); ECF No. 55 ("Dentons' Opp. to Plaintiffs' MTCA); ECF No. 56 ("Plaintiffs' Opp. to Dentons' Motion"); ECF No. 57 ("Plaintiffs' Reply"); ECF No. 58 ("Dentons' Reply"); ECF No. 59 ("Kwon's Reply")).

The Court begins by addressing Kwon's MTCA and Plaintiffs' MTCA, before turning to the Dentons' Motion.

II. KWON'S MTCA AND PLAINTIFFS' MTCA

A. Legal Standard

The Federal Arbitration Act (the "Act" or "FAA") provides that written arbitration agreements in contracts "evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the

revocation of any contract."[2] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (quoting 9 U.S.C. § 2). Under Section 4 of the Act, "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition" the Court "for an order directing that such arbitration proceed in the manner provided for in such agreement." "[U]pon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4. Thus, a court's role under the Act is to determine "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Kilgore v. KeyBank, Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (citation omitted). "If the response is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp.*, 207 F.3d at 1130. "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

When evaluating whether a party is bound by an arbitration agreement, federal courts "'apply ordinary state-law principles that govern the formation of contracts' to decide whether an agreement to arbitrate exists." *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279, 1283 (9th Cir. 2017) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). These include doctrines that authorize the enforcement of a contract by a nonsignatory, such as through "assumption, . . . third-party beneficiary

[2] Plaintiffs argue that the Washington Revised Uniform Arbitration Act applies to this dispute, instead of the FAA, because the EDA "selects substantive Washington law." (Plaintiffs' Opp. to Kwon's MTCA at 22). Plaintiffs are incorrect. *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000) ("parties' inclusion of a choice-of-law clause in the arbitration agreement does not incorporate state decisional law pertaining to the allocation of power between courts and arbitrators").

theories, waiver, and estoppel." *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC ("GE Energy")*, 590 U.S. 432, 437 (2020).

In assessing the existence of an agreement to arbitrate, the Court may consider "the pleadings, documents of uncontested validity, and affidavits submitted by either party." *Chien v. Bumble Inc.*, 641 F. Supp. 3d 913, 932 (S.D. Cal. 2022) (citation omitted). Courts apply "a standard similar to that used in resolving summary judgment under Federal Rule of Civil Procedure 56." *Hansen v. Rock Holdings, Inc.*, 434 F. Supp. 3d 818, 824 (E.D. Cal. 2020). Thus, "[i]n considering a motion to compel arbitration which is opposed on the ground that no agreement to arbitrate was made, a district court should give to the opposing party the benefit of all reasonable doubts and inferences that may arise." *Concat LP v. Unilever, PLC*, 350 F. Supp. 2d 796, 804 (N.D. Cal. 2004). "Only when there is no genuine issue of material fact concerning the formation of an arbitration agreement should a court decide as a matter of law that the parties did or did not enter into such an agreement." *Id.*

B. Discussion

1. The Court, Not an Arbitrator, Decides Whether Defendant Kwon May Compel Arbitration

Under the heading "Choice of Forum," the EDA contains an arbitration clause that states, in its entirety:

> Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All documents and judgments shall remain confidential and one arbitrator shall be selected. The location for any such arbitration shall be King County, Washington.

(EDA at 10). Based on this language, Plaintiffs and Defendant Kwon do not dispute that Avid and NVL could compel each other to arbitration. *See* (Kwon's MTCA; Plaintiffs'

MTCA). The parties dispute, however, whether Defendant Kwon and the Carfields, each of whom did not sign the EDA in their personal capacities but are each individually named in this action, can enforce the EDA.

"Generally, the contractual right to compel arbitration may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration." *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th Cir. 2013) (internal quotation mark omitted); *see also Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1287 (9th Cir. 2009) ("The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement.") (citation omitted). However, "a litigant who is not a party to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract law allows the litigant to enforce the agreement." *Kramer*, 705 F.3d at 1128 (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 632 (2009)). "[T]raditional principles of state law allow a contract to be enforced by or against nonparties to the contract," including principles based on "third-party beneficiary theories [and] . . . estoppel." *Arthur Andersen*, 556 U.S. at 631 (internal citations and quotations omitted); *see also GE Energy*, 590 U.S. at 437 (same).

Defendant Kwon argues that whether the opposing individual parties can enforce the EDA's arbitration clause against each other is a determination that must be made by the Court. *See* (Kwon's Opp. to Plaintiffs' MTCA at 6–7). Plaintiffs, on the other hand, argue based on a delegation clause contained in the EDA that the Court must direct this question to the arbitrator. (Plaintiffs' MTCA at 11); *see also* (EDA). The Court agrees with Defendant Kwon.

"[A] court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate that dispute." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010) (citations omitted); *see also Kilgore*, 718 F.3d at 1058 (stating it is the court's role under the Act to determine whether a valid agreement to arbitrate exists). "To satisfy itself that such an agreement exists, the court must resolve any issue that calls into question the formation or applicability of the specific arbitration

clause that a party seeks to have the court enforce." *Id.* This remains the case where, such as here, the parties to the arbitration agreement have delegated questions of arbitrability to the arbitrator. *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, 1030 (9th Cir. 2022) ("[A] court must resolve any challenge that an agreement to arbitrate was never formed, even in the presence of a delegation clause."). Here, before the Court may compel Defendant Kwon to arbitrate the question of arbitrability, it must "satisfy itself" that Defendant Kwon, as a nonsignatory to the EDA, may enforce the EDA to compel arbitration of this dispute. *See id.*; 9 U.S.C. § 4 ("[U]pon being satisfied that the making of the agreement for arbitration . . . is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement."); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Products Liab. Litig.*, 838 F. Supp. 2d 967, 981 (C.D. Cal. 2012) ("It is the Court's role to interpret and apply the FAA. The Court cannot abdicate that role.").[3]

2. Defendant Kwon May Compel Arbitration Under the EDA

Relying on theories of estoppel and agency,[4] Defendant Kwon argues the Court should determine he may enforce the EDA's arbitration clause against the Carfields in their individual capacity. (Kwon's MTCA at 13–17). Plaintiffs refute that either theory affords Defendant Kwon the right to enforce the clause. (Plaintiffs' Opp. to Kwon's MTCA at 19–26).

Under the theory of equitable estoppel, a party is precluded "from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract

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[3] In addition, as to Defendant Kwon, the terms of the EDA do not contain "clear and unmistakable evidence" conferring on Defendant Kwon the right to enforce the EDA against the individual Plaintiffs in this litigation. Thus, the Court is, at least, authorized to make that determination. *See Kramer*, 705 F.3d at 1127–28 (stating that because there was not "clear unmistakable evidence" that Plaintiffs agreed to arbitrate arbitrability with nonsignatories, the district court was authorized to decide the issue of arbitrability).

[4] Because the Court finds that Defendant Kwon may enforce the arbitration clause under an estoppel theory, it declines to address Defendant Kwon's arguments under an agency theory.

imposes." *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006) (internal quotation marks and citation omitted); *accord Townsend v. Quadrant Corp.*, 173 Wash. 2d 451, 461 (2012).[5] "Where a nonsignatory 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*, 705 F.3d at 1128–29 (internal citations and quotation marks omitted). "Merely making reference to an agreement with an arbitration clause is not enough. 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." *Id.* at 1129 (cleaned up). Additionally, "mere allegations of collusive behavior between signatories and nonsignatories to a contract [is] not enough . . ." *Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1231 (9th Cir. 2013). Instead, "[i]t is the relationship of

[5] Plaintiffs argue that the Court should apply Washington law to this dispute because of the EDA's choice-of-law clause selecting Washington law. *See* (Plaintiffs' Opp. to Kwon MTCA at 26). However, the Court applies California law to this dispute, because "[a] choice-of-law clause, like an arbitration clause, is a contractual right and generally may not be invoked by one who is not a party to the contract in which it appears." *In re Henson*, 869 F.3d 1052, 1059 (9th Cir. 2017). Here, Defendant Kwon is "not a party to the [EDA]" that selects Washington law. *Id.* Under California's choice-of-law principles, the Court would apply Washington law only if, "among other things," Washington law "'materially differs from the law of California.'" *Id.* (citing *Wash. Mut. Bank, FA v. Sup. Ct.*, Cal. 4th 906, 919 (2001). As to the principle of equitable estoppel, there is "no material difference between" Washington and California laws, *id.,* nor have Plaintiffs argued a difference. Therefore, the Court applies California law regarding equitable estoppel when addressing the parties' nonsignatory enforcement dispute, but notes its analysis would be the same under Washington law.

the claims, not merely the collusive behavior of the signatory and nonsignatory parties, that is key." *Id.*

Defendant Kwon argues that Avid, as a signatory, has alleged "substantially interdependent and concerted misconduct" by Defendant Kwon and NLV, a signatory, and "the allegations of interdependent misconduct are founded in or intimately connected with the obligations of the underlying agreement." (Kwon's MTCA at 16). The Court agrees. The gravamen of Plaintiffs' claims against Defendant Kwon in the FAC is that he, acting in concert with NLV, "sought to usurp" Plaintiffs' brand for vape devices. *See, e.g.*, (FAC ¶ 1 ("This is a case about a very successful brand for consumer electronic products—vaporizer ('vape') devices—that a licensee and distributor liked so much that it sought to usurp the whole enterprise, with its principals falsely holding themselves out as founders.")). The FAC alleges this "interdependent misconduct" of Defendant Kwon and NLV is "intimately connected with [NLV's] obligations of the underlying agreement." *See Kramer*, 705 F.3d at 1128–29. Further, the FAC alleges that Defendant Kwon and NLV "used [NLV]'s position as the exclusive distributor of some of Avid Holdings' products to starve Avid Holdings of revenue necessary to fund manufacturing." (FAC ¶ 4). Moreover, the EDA provides for NLV to be the "exclusive distributor of some of Avid Holding's products," and required NLV to meet Minimum Distribution Targets that Avid alleges that Defendant Kwon and NLV conspired to subvert. *See* (FAC ¶¶ 65 ("Next Level failed to meet the quarterly minima" that "were necessary and allowed interdependent commitments to third parties by Avid Holdings, such that the breach of them constituted a fundamental breach running to the core of the [EDA], 66 ("Next Level was consistently deficient in meeting its Minimum Distribution Targets pursuant to Section 3.1 of the [EDA], and consistently failed to make minimum payments discussed between Avid Holdings and Next Level to maintain sufficient revenue for the factory), 90 ("Kwon, Next Level, and Zhao used these circumstances, including the extreme financial hardship that they had created, to usurp the business enterprise for Next Level and embark on an assault on Avid Holdings and the Carfields"), 91 (Next Level, Kwon, and Zhao conducted an

"engineered squeeze" premised on Next Level's withholding of $11 million allegedly owed under the EDA), 96 ("Next Level then purported to purchase Avid Holdings' accounts receivable, acquiring the debt that was owed to the factory and taking over the place and accounts of its counterparty to the Distribution Agreement."). The EDA is also the document from which the scope of NLV's license to use the trademarks allegedly owned by Plaintiffs Avid and Hanna Carfield is to be determined. *See* (FAC ¶ 79 ("the Carfields reiterated to Next Level that it (and its affiliates Kwon and Brosgart) did not own 'AVD,' they licensed AVD, and their enterprise (next level) was not AVD"), 101 ("[Next Level] nevertheless maintains that it somehow owns the valuable trademarks that the [EDA] shows it is a limited licensee of."), 103 ("Kwon has also attempted to obtain federal registrations for trademarks for Avid Holdings owned and licensed intellectual property . . . that Next Level was granted a limited license to use."). Thus, because Plaintiffs' claims seek the benefits of the promises NLV made to Avid in the EDA, it would be inequitable for Avid, and Plaintiffs by extension, to accept the benefits of the contract while avoiding its burden of the arbitration clause. *See Goldman v. KPMG, LLP*, 173 Cal. App. 4th 209, 220 (2009) ("[A] signatory to an agreement with an arbitration clause cannot have it both ways; the signatory cannot, on the one hand, seek to hold the non-signatory liable pursuant to duties imposed by the agreement, which contains an arbitration provision, but, on the other hand, deny arbitration's applicability because the defendant is a non-signatory." (internal quotation marks and citation omitted)); *David Terry Invs., LLC-PRC v. Headwaters Dev. Grp., LLC*, 13 Wash. App. 2d 159, 170 (2020) ("Equitable estoppel precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes." (internal quotation marks and citation omitted)).

Plaintiffs argue that "none of the claims depend on an interpretation of the EDA," and the FAC's references to the EDA are "largely for background and to establish plausibility." (Opp. to Kwon MTCA at 26). The Court finds, however, that at least one claim in the FAC is intimately connected with NLV's obligations under the EDA. Claim

1 alleges Defendant Kwon engaged in tortious interference with business expectancy by "interfer[ing]" with Avid's business relationship with the factory that manufactured its vape devices and by "starving Avid [] of necessary revenue" through causing NLV to underpay on the EDA. *See, e.g.*, (FAC ¶ 168). The factual basis for this claim rests on "non-payment caused by [NLV]" for purchases made under the EDA. *See* (FAC ¶ 173). In the state of Washington, whose laws the contracting parties under the EDA agreed would apply to claims and controversies arising out of the EDA, a plaintiff must prove five elements to succeed on a claim for tortious interference with a contractual relationship or business expectancy: "(1) an economic relationship between plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of that relationship; (3) intentional acts on the part of defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 521–22 (1996); *see also Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wash. 2d 133, 157 (1997) (materially similar elements). As to the third element, a plaintiff must prove that defendant engaged in "intentional *wrongful* acts . . . designed to disrupt the relationship." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1154 (2003) (alterations in original). To prove that Defendant Kwon intentionally and wrongfully "interfered" in the contractual relationship between Avid and its factories , the factfinder would necessarily need to determine whether Defendant Kwon "starv[ed] Avid [] of necessary revenue," which requires an interpretation of the payment rights owed to Avid under the EDA, and whether Defendant Kwon caused such an underpayment. *See Meta Platforms, Inc. v. BrandTotal Ltd.*, 605 F. Supp. 3d 1218, 1276 (N.D. Cal. 2022) ("Generally, if a defendant's conduct was lawful and undertaken to enforce its rights it cannot be held liable for intentional interference with a contract even if it knew that such conduct might interrupt a third party's contract."); *Tacoma Auto Mall,*

Inc. v. Nissan North America, Inc., 169 Wash. App. 111, 132 (2012) ("Exercising one's legal interests in good faith is not improper interference.").[6]

For the foregoing reasons, the Court finds that Defendant Kwon may compel arbitration of the question of arbitrability of this dispute under the EDA based on an equitable estoppel theory.[7]

3. The Carfields May Be Compelled to Arbitrate under the EDA

It is undisputed that Avid, as a signatory to the EDA, may be compelled to arbitrate the dispute. *See* (EDA at 10). Defendant Kwon, however, argues based on the terms of the EDA that the Carfields, who are not signatories to the EDA in their individual capacities, may also be compelled to arbitrate this dispute. (Kwon's MTCA at 17). Plaintiffs do not oppose Defendant Kwon's argument. *See* (Plaintiffs' Opp. to Kwon's MTCA). And from the Court's review of the EDA's, the text of the EDA supports the argument. Specifically, the EDA defines the party "Avid Holdings" to include its "affiliates." *See* (EDA at 10). The FAC alleges that the Carfields are affiliates of Avid Holdings, *see* (FAC ¶¶ 21, 214), as well as its owners and founders who have hired employees, appointed agents, and granted Avid rights to license trademarks and execute contracts with manufacturing partners on behalf of Avid, *see* (*id.* ¶¶ 39, 49–53, 202). The

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[6] Plaintiffs argue that the language of the EDA reflects an intention not to arbitrate claims against Defendant Kwon. (Plaintiffs' Opp. to Kwon MTCA at 17). However, Plaintiffs point to no case law that suggests such an argument may overcome a finding that Defendant Kwon may compel arbitration on an equitable estoppel theory. And, indeed, as Defendant Kwon points out, if the language of the EDA did allow Defendant Kwon to enforce the agreement either directly or as a third-party beneficiary, he would not need to invoke equitable estoppel. Accordingly, the Court rejects Plaintiffs' argument.

[7] Claim 1 also incorporates other alleged acts of tortious interference that are not based on the EDA, such as the "making of false statements and defamation" (FAC ¶ 174) and interference with "Avid['s] relationship with [legal] counsel." (*Id.* ¶ 172). However, given that the Court is "satisfied that the making of the agreement for arbitration . . . is not in issue," the Court declines to further analyze whether other theories under Claim 1 are necessarily intertwined with obligations under the EDA. *See* 9 U.S.C. § 4 (upon being satisfied that an agreement is formed, "the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement").

Court therefore finds that Defendant Kwon may compel both Avid and the Carfield Plaintiffs to arbitrate the question of arbitrability of the dispute under the EDA.

4. EDA Delegation Clause

Defendant Kwon argues that the FAC's claims fall within the scope of the EDA. *See* (Kwon's MTCA at 25). Regardless of whether that is true, the question is not before this Court. The EDA incorporates the American Arbitration Association's Commercial Arbitration Rules, which explicitly delegate questions of scope to the arbitrator. *See* (EDA at 10); Am. Arb. Ass'n, Com. Arb. Rule 7(a) ("The arbitrator shall have the power to rule on his or her own jurisdiction, including any objection with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim."). The Ninth Circuit has held that, where sophisticated parties incorporate the AAA's Commercial Arbitration Rules into an arbitration agreement, such an incorporation is "clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability." *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015) ("[I]ncorporation of the AAA rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability.").

Accordingly, because the Court is satisfied that, under the EDA, the issue of arbitrability is to be decided by the arbitrator, the Court leaves for the arbitrator to determine which claims in the FAC against Defendant Kwon may be subject to arbitration under the EDA.

5. Stay of Action as to Defendant Kwon

Defendant Kwon requests a stay of the action under 9 U.S.C. § 3. (Kwon's MTCA at 29). "When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding." *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024). Accordingly, the Court stays the proceedings as to Defendant Kwon.

6. Stay of Action as to the Dentons Defendants

Plaintiffs seek a "limited stay" as to the claims against the Dentons Defendants while the arbitrator determines questions of arbitrability as to Defendant Kwon and Plaintiffs.[8] (Plaintiffs' MTCA at 12). The Dentons Defendants oppose a stay as to the claims brought against them, arguing that a stay would prejudice them, that Plaintiffs would suffer no hardship or inequity, and that judicial efficiency does not support a stay. (Dentons' Opp. to Plaintiffs' MTCA at 1–2). The Dentons Defendants are not a party to the EDA, nor has any party moved to find that the Dentons Defendants should have standing to enforce the EDA under principes of contract law.[9]

As an initial matter, Plaintiffs contend that a stay against the Dentons Defendants is required under 9 U.S.C. § 3 and *Spizzirri*. (Plaintiffs' Reply at 12). However, § 3 requires the "stay [of] litigation of arbitral claims pending arbitration of those claims." *See AT&T Mobility*, 563 U.S. at 344 ("[Section] 3 requires courts to stay litigation of arbitral claims pending arbitration of those claims 'in accordance with the terms of the agreement."). And *Spizzirri* foreclosed the dismissal of a suit "on the basis that *all the claims* are subject to arbitration," which is not the case here. *See* 601 U.S. at 475–76 (emphasis added). Here, where no parties have moved to compel the Dentons Defendants to arbitration, the Court does not find that *Spizzirri* requires the Court to stay the claims against the Dentons Defendants. *See Durphy v. Experian Info. Sols., Inc.*, 2025 WL 289071, at *6 (W.D. Wash. Jan. 24, 2025) (staying claims against party to arbitration agreement but noting "[t]his will not prevent [Plaintiff] from litigating her claims against" a non-party to the arbitration agreement).

Under the circumstances, however, a discretionary stay may be available to Plaintiffs. "Where some litigants are not parties to the arbitration agreement, the court

[8] From the parties' briefing, it is not clear whether Defendant Kwon supports or opposes a stay of claims against the Dentons Defendants. Accordingly, the Court addresses only the Plaintiffs' arguments for a stay as to the claims against the Dentons Defendants.

[9] Although Plaintiffs discuss in their Reply that the claims against the Dentons Defendants "may" be arbitrable, Plaintiffs have not so moved. *See* (Plaintiffs' Reply at 11).

must nonetheless stay the entire action if arbitration of claims against a party to an arbitration agreement is likely to resolve factual questions coextensive with claims against nonparties to that arbitration agreement." *Jaffe v. Zamora*, 57 F. Supp. 3d 1244, 1248 (C.D. Cal. 2014) (internal quotation marks and citation omitted). The decision to stay proceedings of nonarbitrable claims "is one left to the district court . . . as a matter of its discretion to control its docket." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 n.23 (1983) ("In some cases, of course, it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the arbitration."). When deciding to issue a docket management stay, district courts must weigh three factors: "(1) the possible damage which may result from the granting of a stay; (2) the hardship or inequity which a party may suffer in being required to go forward; and (3) the orderly course of justice measured in terms of simplifying or complicating of issues, proof, and questions of law." *In re PG&E Corp. Sec. Litig.*, 100 F.4th 1076, 1085 (9th Cir. 2024). A court's concern for "judicial efficiency, standing alone[,] is not necessarily a sufficient ground to stay proceedings." *Id.* "Even if there are efficiencies to be gained by a stay, the district court must also weigh the relative hardships that a stay might cause." *Id.* at 1087. "The proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

The Court thus addresses the factors for a discretionary stay as to the claims against the Dentons Defendants.

a) Judicial Economy

Starting with the last factor, there is some judicial economy to be gained by staying the action as to the Dentons Defendants pending the results of arbitration as to Defendant Kwon. All the claims brought against the Dentons Defendants are also brought against Defendant Kwon. There is also at least some factual overlap between the FAC's alleged basis for the claims against the Dentons Defendants and the claims alleged against Defendant Kwon. Here, Plaintiffs allege the following actions as a basis for liability against the Dentons Defendants: (1) "ghostwriting" Defendant Yu's letter to Avid's

counsel in Arbitration I, of which Defendant Kwon was allegedly aware and from which Defendant Kwon allegedly benefitted; (2) sending cease-and-desist letters, allegedly on behalf of NLV and Defendant Kwon; (3) obtaining unauthorized access to the Carfields' materials through the cover a pretextual subpoena to Defendant Yu in the Delaware Action, through an alleged conspiracy with Defendant Kwon. *See* (FAC). Although it remains to be seen whether some or all of claims against Defendant Kwon may be subject to arbitration—such a question is for the arbitrator to decide under the EDA—"the court acknowledges the possibility of inconsistent rulings" if a stay of Dentons Defendants' claims were not issued. *See Cisco Sys., Inc. v. Chung*, 462 F. Supp. 3d 1024, 1045 (N.D. Cal. 2020). Nevertheless, Plaintiffs "fail[] to explain how the court's abstention in this action would simplify th[e] questions" over which the arbitrator and this court may ultimately both pass judgment. *See id.* Plaintiffs argue that the claims against Dentons Defendants "would also very likely be arbitrable under the same arguments that [Defendant] Kwon raises" (Plaintiffs' MTCA at 16), however, Plaintiffs do not support this assertion with analysis, case law, or allegations in the FAC that the Dentons Defendants would be subject to arbitration under an equitable estoppel theory. *See* (Plaintiffs' Reply at 14). Plaintiffs also argue that potential motions practice before this Court related to the Dentons Defendants may or may not be necessary depending on a decision by an arbitrator. (Plaintiffs' MTCA at 17). However, whether such speculative motions practice could be obviated by an arbitrator's determination remains to be seen. Accordingly, while some judicial economy may be gained from a stay, the Court does not find such efficiencies are dispositive in granting a stay here.

b) Damage, Hardship, and Inequity

The Dentons Defendants argue they would suffer damage from a stay because their Motion would not be timely adjudicated. (Dentons' Opp. to Plaintiffs' MTCA at 5). The Dentons Defendants further argue that Plaintiffs "cannot predict the speed at which arbitration, to which the Dentons Defendants are not a party, will proceed." (*Id.*). Plaintiffs respond that "any delay in ruling on the Dentons Defendants' anti-SLAPP motion . . . is

per se not prejudicial" when Courts regularly defer deciding anti-SLAPP motions after granting dismissal on other grounds or granting leave to amend. (Plaintiffs' Reply at 14). Although it may be true that courts sometimes defer ruling on anti-SLAPP motions, it does not follow that deferring ruling on the Dentons Motion here is not prejudicial. Indeed, Plaintiffs initiated this action, and the Dentons Defendants have a right to defend themselves in the action. Staying the case would effectively suspend the Dentons Defendants' ability to do so while waiting for an arbitration to proceed where they currently have no stake and no say. There is thus at least a "fair possibility that the stay . . . will work damage on" the Dentons Defendants' ability to defend themselves in this suit. *See Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005).

Plaintiffs argue that the delay in adjudicating the Dentons Defendants' Motion is outweighed by the "substantial hardship and inequity" Plaintiffs would face by having to "continue to expend resources litigating this case." (Plaintiffs' Reply at 19). However, Plaintiffs cannot claim irreparable prejudice from expending resources to litigate a case that they initiated. *Mohamed v. Uber Techs.*, 115 F. Supp. 3d 1024, 1032–33 (N.D. Cal. 2015) ("[N]early all courts have concluded that incurring litigation expenses does not amount to irreparable harm."). Moreover, no party has brought a motion to compel the Dentons Defendants to arbitration, and so any savings presented by the expediency of arbitration discovery procedures are immaterial to the claims against the Dentons Defendants at this time. *Cf. Ward v. Estate of Goossen*, 2014 WL 7273911, at *3 (N.D. Cal. Dec. 22, 2014) (finding that arbitration is "unique" with respect to determining whether resources expended in litigation are considered irreparable harm).

Accordingly, the Court finds that Plaintiffs have not carried their burden to demonstrate a "clear case of hardship or inequity" that would result but for the Court entering a stay. *Lockyer*, 398 F.3d at 1112. The Court denies Plaintiffs' Motion with for a stay against the Dentons Defendants, and the Court proceeds to address the Dentons' Motion.

III. DENTONS' MOTION

A. Legal Standard

Dentons Defendants argue that all of Plaintiffs claims against them arise out of Dentons Defendants' representation of their client, NLV, in prior proceedings, and are thus barred under the *Noerr-Pennington* doctrine, California's Litigation Privilege, California's Anti-SLAPP law, and California's Agency Immunity Rule. *See* (Dentons' Motion). Dentons Defendants also argue that the claims against them fail to state a claim as a matter of law under Rule 12(b)(6) and are barred by issue and claim preclusion. (*Id.*). Plaintiffs disagree, in large part because they contend the FAC against Dentons Defendants plausibly pleads that the Dentons Defendants acted pursuant to an objectively baseless sham subpoena, and the alleged unlawful conduct is noncommunicative. (Plaintiffs' Opp. to Dentons' Motion at 22). Defendants also disagree that the claims are insufficiently pleaded or precluded. *See* (*id.*).

Because the Court finds that the FAC's alleged unlawful conduct by Dentons Defendants falls within the scope of the Petition Clause and because the FAC fails to plausibly plead that Dentons Defendants' petitioning conduct was a sham, the Court addresses only Dentons Defendants' arguments regarding the *Noerr-Pennington* doctrine.

1. Motion to Dismiss

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). When resolving a motion to dismiss for failure to state a claim under Rule 12(b)(6), courts "must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). "Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a

cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). To survive a Rule 12(b)(6) motion, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 556. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (internal quotation marks omitted).

When ruling on a Rule 12(b)(6) motion, the Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The Court is "not required to accept as true allegations that contradict exhibits attached to the Complaint," allegations that contradict "matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Seven Arts Filmed Ent., Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (citing *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)).

2. Anti-SLAPP Motion

California's anti-SLAPP statute, codified at California Code of Civil Procedure section 425.16, allows a defendant to file a special motion to strike a complaint that is brought primarily to chill the valid exercise of free speech. Such motions may be brought in federal court against a plaintiff's state law claims. *U.S. ex rel. Newsham v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 970–73 (9th Cir. 1999). Section 425.16 involves a two-step inquiry. First, the "moving defendant must make a prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's constitutional right to free speech." *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th Cir. 2013); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1110 (9th Cir. 2003). Second, once the defendant satisfies its threshold burden, the burden shifts to the plaintiff to produce admissible

evidence establishing a probability that it will prevail on the merits of its claims. Cal. Civ. Proc. Code § 425.16(b); *Sweetwater Union High School Dist. v. Gilbane Building Co.*, 6 Cal. 5th 931, 947 (2019); *Chavez v. Mendoza*, 94 Cal. App. 4th 1083, 1087 (2001). To establish a probability of success on the merits, the plaintiff must demonstrate that his claims are both legally viable and supported by a prima facie showing of facts sufficient to support a favorable judgment if the evidence submitted by the plaintiff is credited. *Matson v. Dvorak*, 40 Cal. App. 4th 539, 548 (1995).

In ruling on an anti-SLAPP motion, a federal court uses the framework for a Federal Rule of Civil Procedure 12(b)(6) motion to determine whether a plaintiff has satisfied the second prong on the anti-SLAPP analysis, *i.e.*, whether the plaintiff has demonstrated a probability of prevailing on the merits of his or her state law claim. *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, 890 F.3d 828, 834 (9th Cir. 2018). For purposes of this inquiry, the trial court "considers the pleadings and evidentiary submissions of both the plaintiff and defendant (§ 425.16, subd. (b)(2)); though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." *Soukup v. Law Offices of Herbert Hafif*, 39 Cal. 4th 260, 291 (2006). Here, the plaintiff need only establish that his or her claim has "minimal merit" to avoid being stricken as a SLAPP. *Id.* However, if the plaintiff cannot meet his or her burden, the court must strike all defective claims.

Upon concluding that a claim should be stricken under the anti-SLAPP statute, courts are precluded from granting plaintiff leave to amend his or her complaint, as doing so would undermine the statute by providing the plaintiff with a ready escape from anti-SLAPP's quick dismissal remedy. *Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073 (2001). A defendant who prevails on its anti-SLAPP motion "shall" be entitled to recover its attorneys' fees and costs. Cal. Civ. Proc. Code § 425.16(c).

B. Discussion

1. Evidentiary Matters

Before addressing the merits of the Dentons' Motion, the Court addresses evidentiary matters raised in the parties' briefing. First, in support of the Dentons' Motion, Dentons Defendants request judicial notice of eleven exhibits, broken down into three categories: (1) two exhibits are screenshots of publicly available web links (Exhibits 1–2); (2) eight exhibits are orders or judgments in prior court and arbitral proceedings (Exhibits 3–8, and 10); and (3) one exhibit is the subpoena issued to Defendant Yu in the Delaware Action (Exhibit 9). *See* (ECF No. 41-1 ("RJN ISO Dentons' Motion")). Plaintiffs "take no position" on Dentons Defendants' requests for judicial notice. *See* (Plaintiffs' Opp. to Dentons' Motion at 7 n.1). The Court grants Dentons Defendants' request for judicial notice as to Exhibits 3–8, and 10, because the Court "may take notice of proceedings in other courts" and arbitral forums, and the proceedings referenced in such exhibits "have a direct relation to matters at issue" in the Dentons' Motion. *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F. 2d 244, 248 (9th Cir. 1992); *see also Glob. Indus. Inv. Ltd. v. Chung*, No. 19-cv-07670-LHK, 2020 WL 5355968, at *4 (N.D. Cal. Sept. 7, 2020) (extending to arbitral proceedings and collecting cases). Because the Court finds in favor of the Dentons Defendants, and does not need to rely on Exhibits 1–2, and 9, in doing so, the Court denies as moot Dentons Defendants' request for judicial notice as to those Exhibits. *See Great Basin Mine Watch v. Haskins*, 456 F.3d 955, 976 (9th Cir. 2006).

Second, Plaintiffs support their Opposition to the Dentons' Motion with a declaration by Counsel Colin Hagan, which attaches additional exhibits. (ECF No. 56-1 ("Hagan Decl.")). However, neither the Plaintiffs' Opposition to the Dentons' Motion nor the Hagan Declaration request judicial notice of the attached exhibits. The Dentons Defendants object on evidentiary grounds to the Hagan Declaration (ECF No. 58-1 ("Dentons Evidentiary Objections")). Because the Court does not rely on the materials attached to the Hagan Declaration in ruling on the Dentons' Motion, the Court overrules the Dentons Defendants' objections. *See Great Basin Mine Watch*, 456 F.3d at 976. To

the extent that Plaintiffs seek judicial notice of those declarations, the Court denies such a request as moot.

2. *Noerr-Pennington* Doctrine

"The *Noerr-Pennington* doctrine derives from the First Amendment's guarantee of 'the right of the people . . . to petition the Government for a redress of grievances.'" *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006) (quoting U.S. Const. amend. I). "Under the *Noerr-Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct." *Id.* (quoting *Empress LLC v. City & Cnty. of S.F.*, 419 F.3d 1052, 1056 (9th Cir. 2005)). "[T]he *Noerr-Pennington* doctrine stands for a generic rule of statutory construction, applicable to any statutory interpretation that could implicate the rights protected by the Petition Clause." *Id.* at 931 (citing *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000)). "Though the *Noerr-Pennington* doctrine first arose in the antitrust context, [the Ninth Circuit] ha[s] extended its application." *B&G Foods N. Am., Inc. v. Embry*, 29 F.4th 527, 535 (9th Cir. 2022). The *Noerr-Pennington* doctrine also applies to state law claims, whether common law or statutory. *See Fitbit, Inc. v. Laguna 2, LLC*, No. 17-cv-00071-EMC, 2018 WL 306724, at *2 (N.D. Cal. Jan. 5, 2018); *Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 956 (S.D. Cal. 1996).

Both the actual filing of lawsuits and conduct that is "incidental to the prosecution of the suit" may be protected under the *Noerr-Pennington* doctrine "to preserve the breathing space essential to the fruitful exercise of the right to petition." *See Sosa*, 437 F.3d at 933, 934. Conduct incidental to the prosecution of a lawsuit may include, for example, discovery correspondence and settlement talks. *See Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1185 (9th Cir. 2005). However, immunity under *Noerr-Pennington* is not absolute, because "neither the Petition Clause nor the *Noerr-Pennington* doctrine protects sham petitions." *Sosa*, 437 F.3d at 932.

Plaintiffs argue that the Dentons Defendants' conduct does not qualify as "protected petitioning activity" because the FAC plausibly alleges with sufficient particularity that the

Dentons Defendants' conduct in relation to the subpoena in the Delaware Action was "objectively baseless." (Plaintiffs' Opp. to Dentons' Motion at 20).

Before turning to the "sham" litigation exception invoked by Plaintiffs, the Court first determines that the Dentons Defendants' conduct as alleged in the FAC was at least "incidental to" petitioning activities. *B&G Foods*, 29 F.4th at 535. Here, Plaintiffs' suit challenges the following alleged conduct by the Dentons Defendants: (1) DDJP's alleged role in interfering with Avid's relationship with counsel in Arbitration I through ghost-writing the Defendant Yu email to Avid's then-counsel (FAC ¶¶ 172, 195); (2) DDJP's alleged role in sending cease-and-desist letters to the customers and business partners of the Carfields (*id.* ¶¶ 179, 181); and (3) the Dentons Defendants' alleged role in serving a subpoena on Defendant Yu in the Delaware Action and obtaining material from Mr. Carfield's laptop pursuant to that subpoena (*id.* ¶¶ 232, 233, 245, 256, 263, 302). Plaintiffs challenge "[p]re-litigation settlement demands" and "events that occurred in the course of" NLV's petitioning conduct in the Delaware Action and Arbitration I, including "discovery communications" and interactions with opposing counsel in Arbitration I. *See Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 645 (9th Cir. 2009); *see Freeman*, 410 F.3d at 1185 ("Discovery, like settlement talks, is conduct incidental to a petition."). Although these actions may not necessarily directly burden petitioning rights, they are part of the "breathing space" required to "adequately [] protect [Dentons Defendants'] ability to exercise" its rights under the petition clause. *Sosa*, 437 F.3d at 933. Because these actions are "sufficiently related to petitioning activity," they are "sufficiently within the protection of the Petition Clause to trigger the *Noerr-Pennington* doctrine," so long as the alleged conduct is not objectively baseless. *See id.* at 935.

"Sham litigation" that is objectively baseless is not protected under the *Noerr–Pennington* doctrine. *See Kottle v. Northwest Kidney Ctrs.*, 146 F.3d 1056, 1061 (9th Cir. 1998). There are three identified circumstances in which the sham exception might apply in the litigation context. *B&G Foods*, 29 F.4th at 537–38. The first exception is invoked by Plaintiffs here: where a "lawsuit is objectively baseless and the defendant's motive in

bringing it was unlawful." *Id.*; (Plaintiffs' Opp. to Dentons' Motion at 22). In other words, a "sham" lawsuit is one that is both "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits," and "an attempt to interfere directly with the business relationship of a competitor through the use of the governmental process— as opposed to the outcome of that process." *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 60–61 (1993) (alteration, citation and internal quotation marks omitted). This test has both a subjective and objective prong. To establish that the Dentons Defendants' conduct was a "sham," Plaintiffs move prove: (1) the Dentons Defendants' conduct was objectively baseless in the sense that it could not have expected to prevail in the litigation; and (2) the Denton Defendants' motive in committing the conduct was unlawful. *See EcoDisc Tech. AG v. DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d 1074, 1083 (C.D. Cal. 2010); *Perez v. DirecTV Grp. Holdings, LLC*, No. 8:16-cv-01440-JLS-DFM, 2019 WL 6362471, at *9 (C.D. Cal. July 23, 2019). Regarding "conduct incidental to" a petitioning activity, the sham exception applies with equal force to incidental conduct as it does the underlying litigation. *See Theofel v. Farey-Jones*, 359 F.3d 1066, 1079 (9th Cir. 2004) ("[W]e hold that [*Noerr-Pennington*] is no bar where the challenged discovery conduct itself is objectively baseless."); *Sosa*, 437 F.3d at 938 ("[W]e have observed that private discovery conduct, not itself a petition, may fall within the sham exception where *either* the conduct itself, *or* the underlying petition, meets [the] sham litigation test." (emphasis added)); *see also Acosta v. FCE Benefit Administrators, Inc.*, No. 17-CV-05448-JSW, 2018 WL 11447534, at *6 (N.D. Cal. Jan. 22, 2018).

Plaintiffs' allegations that the sham litigation exception applies are subject to a heightened pleading standard. *See Kottle*, 146 F.3d at 1063 ("when a plaintiff seeks damages . . . for conduct which is prima facie protected by the First Amendment, the danger that the mere pendency of the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required. In such cases, we employ a heightened pleading standard") (internal citations and quotation marks omitted).

While a court continues to "accept as true well-pleaded allegations with respect to sham litigation," *In re Outlaw Lab'y, LP Litig.*, No. 3:18-cv-1820-GPC-BGS, 2019 WL 1205004, at *5 (S.D. Cal. Mar. 14, 2019), the complaint must "contain specific allegations demonstrating that the *Noerr-Pennington* protections do not apply." *Boone v. Redevelopment Agency of City of San Jose*, 841 F.2d 886, 894 (9th Cir. 1988). As the Ninth Circuit has stated, "[c]ourts should not 'lightly conclude in any *Noerr-Pennington* case that the litigation in question is objectively baseless, as doing so would leave that action without the ordinary protections afforded by the First Amendment," which, per the Ninth Circuit, is a result that courts should "reach only with great reluctance.'" *Relevant Grp., LLC v. Nourmand*, 116 F.4th 917, 934 (9th Cir. 2024) (citing *White v. Lee*, 227 F.3d 1214, 1232 (9th Cir. 2000)).

With this framework in mind, the Court applies the "sham litigation" exception to the three courses of unlawful conduct alleged against the Dentons Defendants in the FAC.

a) "Ghostwriting" Defendant Yu's Letter

As an initial matter, Plaintiffs do not argue in their Opposition that the Dentons Defendants' alleged actions to "interfere" with the relationship between Avid and its counsel in Arbitration I through "ghostwriting" the letter from Defendant Yu is "objectively baseless." *See generally* (Plaintiffs' Opp. to Dentons' Motion). Nor have Plaintiffs met their burden under the "sham litigation" exception to overcome the protection invoked by the Dentons Defendants under the *Noerr-Pennington* doctrine. The FAC alleges that on October 11, 2021, Defendant Yu sent an email from a personal email address purporting to be "Frank Zhao," to counsel for Avid in Arbitration I. (FAC ¶ 124). The FAC further alleges that DDJP "confirmed that this email . . . was written by [NLV's] lawyers" in Arbitration I. *See* (*id.* ¶ 125). However, the FAC does "not contain specific allegations demonstrating that the *Noerr-Pennington* protections do not apply." *Boone*, 841 F.2d at 894. It instead broadly alleges that Defendant Yu's email "contains a material falsehood that was used to mislead third parties and deter representation." (FAC ¶ 125). Such an allegation is conclusory and "devoid of specific facts" showing that the Dentons

Defendants engaged in unlawful conduct. *See Borges v. Cnty. of Mendocino*, 506 F. Supp. 3d 989, 1002 (N.D. Cal. 2020). The FAC does not, for example, plausibly allege facts to establish that the Dentons Defendants were in fact perpetuating "a material falsehood," or knew that Defendant Yu's assertions of ownership were materially false. *See* (FAC ¶¶ 121–127).

b) Cease-and-Desist Letters

As with its first alleged basis for liability against the Dentons Defendants, Plaintiffs do not argue in their Opposition that the Dentons Defendants' alleged actions to send cease-and-desist letters were "objectively baseless." *See generally* (Plaintiffs' Opp. to Dentons' Motion). And the Court finds that the FAC does not sufficiently plead that such conduct was "objectively baseless." The FAC conclusively states that Defendant Kwon sent cease-and-desist letters, "aided and abetted" by DDJP, "claiming that Mr. Carfield is prohibited from engaging in any commerce whatsoever in regard to vape devices." *See* (FAC ¶ 181); *see also* (*id.* ¶ 179). Although these allegations state that they "implied a threat of legal action despite no litigation actually pending or under serious consideration" (*id.* ¶ 181), the FAC does not allege facts to show "exactly what representations [were] made, or to whom" and "what exactly its 'improper and/or unlawful' methods of advocacy were." *See Kottle*, 146 F.3d at 1056; *see also Wonderful Real Estate Dev. LLC v. Laborers Int'l Union of N. Am.*, No. 1:19-cv-00416-LJO-SKO, 2020 WL 91998, at *7 (E.D. Cal. Jan. 8, 2020) ("[P]laintiff has not pled facts that disprove the challenged lawsuit['s] legal viability." (citation omitted)). The allegations also do not "support a plausible inference that the alleged threats in the cease-and-desist letter were objectively baseless." *UMG Recordings, Inc. v. Global Eagle Ent'mt, Inc.*, 117 F. Supp. 3d 1092, 1114 (C.D. Cal. 2015).

c) Subpoena in Delaware Action

Turning to the final category of unlawful conduct alleged against the Dentons Defendants in the FAC—conduct regarding the subpoena issued to Defendant Yu in the Delaware Action—plaintiffs strenuously object to *Noerr-Pennington* immunity for such

conduct and raise the "sham" exception in their Opposition. *See* (Plaintiffs' Opp. to Dentons' Motion at 20).

The FAC does allege some facts asserting that the Dentons Defendants' conduct regarding the subpoena was objectively baseless. *See* (FAC ¶¶ 149, 152, 153). In their Opposition, Plaintiffs argue that these allegations plausibly plead the Dentons Defendants' litigation conduct was objectively baseless because "there is no credible basis for anyone to have believed that it was proper to coordinate with [Defendant Yu] to invade Plaintiffs' electronic networks and take many thousands of documents, including communications protected by the attorney-client and spousal privileges." (Plaintiffs' Opp. to Dentons' Motion at 20). However, the Delaware court's order on the use of the documents obtained from the computer does not demonstrate that the subpoena "was objectively baseless in the sense that it could not have" been anything other than a pretextual device to sanction the wrongful taking of Mr. Carfield's documents.[10] *See Prof'l Real Est. Inv'rs, Inc.*, 508 U.S. at 60–61; *see also Seven Arts Filmed Ent.*, 733 F.3d at 1254 (The court is "not required to accept as true allegations that contradict" "matters properly subject to judicial notice"). Here, when the use of documents from the subpoena was challenged by Plaintiffs in a motion for a protective order in the Delaware Action, the Delaware court ultimately allowed the parties to use the documents obtained from the computer provided by Defendant Yu for depositions and to fill claimed deficiencies in the Carfields' production of documents. *See* (ECF No. 41-12 ("Delaware Chancery Court Order") at 9). Although the Delaware court did not validate the subpoena on its face by ruling on a motion to quash, the Delaware court's decision to allow limited use of the documents supports an inference

[10] Plaintiffs have not opposed the Dentons Defendants' request for judicial notice of the Delaware court's order and, indeed, the Delaware court's order is "not subject to reasonable dispute," is a matter in the public record, and is incorporated by reference in paragraph 156 of the FAC. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (on a motion to dismiss, a court "may consider evidence on which the complaint necessarily relies," if the complaint refers to the document, is central to the claim, and no party questions its authenticity).

that the subpoena was not objectively baseless. *See Relevant Grp.*, 116 F.4th at 932 ("[W]inning [a] lawsuit 'is by definition . . . not a sham'"). Moreover, the Delaware court made no findings as to who ultimately owned the laptop from which Defendant Yu produced the documents and, indeed, noted that ownership of the laptop was in dispute between the parties. (Delaware Chancery Court Order at 9 ("I cannot yet determine that that is what has occurred, due to the factual disputes over the ownership of the laptop and email accounts.")); *see Easton Diamond Sports*, 720 F. Supp. 3d at 862 (alleged litigation conduct was not objectively baseless where "the ITC Judge held that genuine disputes of material fact exist regarding whether [Plaintiff's] accused products meet the claim limitations").

Turning to the subjective prong, the FAC contains only conclusory allegations that the Dentons Defendants knew that Defendant Yu had gained unauthorized access to the laptop. *See, e.g.*, (FAC ¶ 155 ("Upon information and belief, [Dentons Defendants] were aware that the laptop and the online accounts did not belong to [Defendant Yu]."")). While the Delaware court found that Defendant Yu "bypassed the password on the laptop and cloud accounts in some way," it made no finding as to the Dentons Defendants' awareness of any unauthorized access. (Delaware Chancery Court Order at 10); *see* (FAC ¶ 156 (quoting Delaware court's finding that "'Plaintiff's counsel has been unable to explain to me or defend how [Defendant Yu] accessed password-protected accounts on the laptop'")). The Delaware court's findings, coupled with the conclusory statements in the FAC, are insufficient to support that the Dentons Defendants knew such documents were unlawfully obtained and had a motive to use such documents in furtherance of unlawful conduct.[11]

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[11] In its Opposition, Plaintiffs also argue that the Dentons Defendants committed "objectively baseless" misconduct by coordinating with Defendant Yu "to obtain unauthorized access to Plaintiffs' electronic networks well before they served the performative subpoena to attempt to cover their tracks." (Plaintiffs' Opp. to Dentons' Motion at 22). However, such an argument also rests on conclusory allegations in the FAC that are insufficient for Plaintiffs to sufficiently plead the "sham" exception with respect to such conduct. *See, e.g.*, (FAC ¶ 235 (conclusory statement that the Dentons Defendants

See Easton Diamond Sports, 720 F. Supp. 3d at 862 (fails to plead that conduct is objectively baseless where "[Plaintiff] fails to tie [Defendant] to those allegations with the requisite particularity"); *EcoDisc Tech. AG v. DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d 1074, 1084 (C.D. Cal. 2010) ("The FSC contains no allegations that suggest Defendants' belief that their proprietary standards were being improperly utilized by replicators to manufacture EcoDiscs was unreasonable.").

Plaintiffs point to *Theofel v. Farey-Jones*, 359 F.3d 1066, 1078 (9th Cir. 2004), to argue that, like the putative subpoena in *Theofel*, the Dentons Defendants' use of the subpoena to obtain documents from Defendant Yu in the Delaware Action was "objectively baseless." (Plaintiffs' Opp. to Dentons' Motion at 22). In *Theofel*, the plaintiffs and the defendant were parties to a commercial litigation in New York and, as part of that litigation, the defendant sought access to the plaintiffs' email accounts maintained in connection with the plaintiffs' positions as officers of a third-party company. 359 F.3d at 1071. Defendant thus subpoenaed the third-party company's internet service provider for "all copies of e-mails sent or received by anyone" at the third-party company, "with no limitation as to time or scope." *Id.* The internet service provider responded by providing a "sample" of such emails to the defendant's counsel, without notifying the plaintiffs' counsel. *Id.* After the plaintiffs discovered what had occurred, they sought to quash the subpoena and impose sanctions. *Id.* Both requests were granted by the magistrate judge, who called the subpoena "patently unlawful" and "massively overbroad," awarding over $9,000 in sanctions. *Id.* at 1072. The plaintiffs, along with other employees of the third-party company whose emails were included in the sample, filed suit against the defense counsel, claiming violations of the Stored Communications Act, Wiretap Act, and Computer Fraud and Abuse Act, and various state laws. *Id.* On appeal, the Ninth Circuit found that the magistrate judge's finding that the subpoena was "'transparently and egregiously' overbroad and that the

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"coordinated a subpoena as a pretext" and stating, without explanation, that the Dentons Defendants "knew and had reason to know that the laptop did not belong to [Defendant Yu] and that he did not have proper access to it")).

defendants acted with gross negligence and in bad faith'" is "tantamount to a finding that the subpoena was objectively baseless." *Id.* at 1079.

Theofel is distinguishable from the instant case based on facts as-alleged in the FAC and the Delaware court's findings regarding the subpoena in the Delaware Action. First, unlike the parties in *Theofel*, Plaintiffs never sought to quash the subpoena or impose sanctions upon NLV or the Dentons Defendants in the Delaware Action. While Plaintiffs filed a protective order requesting NLV be prohibited from using the produced documents, the Delaware court ultimately allowed NLV to use documents obtained in response to the subpoena for limited purposes. (Delaware Chancery Court Order at 9). Second, while the Delaware court expressed some concerns over how Defendant Yu obtained the laptop, forming a "cloud over" the production, it did not, contrast to the magistrate judge in *Theofel*, find that the subpoena was "massively overbroad" and "patently unlawful" such that the Dentons Defendants "acted in bad faith" or at least demonstrated "gross negligence." *Compare Theofel*, 359 F.3d at 1071–72 *with* (Delaware Chancery Court Order at 10). The Delaware court expressed "disappoint[ment] in Plaintiff's counsel's unexplained inability to answer my questions about how [Defendant Yu] obtained the documents on the cloud drives" (ECF Delaware Chancery Court Order at 11), but such statements are not "tantamount to a finding that the subpoena was objectively baseless." *Theofel*, 359 F.3d at 1079. Third, unlike the subpoena in *Theofel*, there is nothing in the Delaware court's findings to suggest that the subpoena here was "overbroad." While the FAC alleges that the subpoena was broad because it sought "all communications," "all documents, and "all agreements," it admits that such requests were limited to certain topics and were subject to a date range limit. *See* (FAC ¶ 153).

For the foregoing reasons, the Court finds that Plaintiffs have not met their burden to demonstrate that the subpoena was "objectively baseless" and thus the Dentons Defendants' conduct as alleged in the FAC is subject to immunity under the *Noerr-Pennington* doctrine.

3. Anti-SLAPP Motion

Because the Court grants Plaintiffs leave to file an amended Complaint, the Court defers ruling on the Dentons Defendants' anti-SLAPP Motion. If and upon the filing of Plaintiffs' Second Amended Complaint, the Dentons Defendants may renew their anti-SLAPP motion at that time. *See Verizon Delaware, Inc. v. Covad Commc'ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) ("If the offending claims remain in the first amended complaint, the anti-SLAPP remedies remain available to defendants").

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Kwon's MTCA, DENIES the Plaintiffs' MTCA, and GRANTS Dentons' Motion. The Court further ORDERS as follows:

1. The claims by Plaintiffs against Defendant Kwon are hereby COMPELLED to an arbitrator in accordance with the terms of the EDA;
2. This action is STAYED with respect to the claims by Plaintiffs against Defendant Kwon; and

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3. The claims by Plaintiffs against the Dentons Defendants are hereby DISMISSED without prejudice and with leave to amend. Plaintiffs may file a Second Amended Complaint within twenty-one (21) calendar days of the date of entry of this Order that cures the deficiencies identified in this Order. Failure to timely file a Second Amended Complaint that cures the deficiencies identified in this Order shall be deemed grounds to dismiss the action with prejudice as to the Dentons Defendants.

IT IS SO ORDERED.

DATED: August 7, 2025

HON. SHERILYN PEACE GARNETT
UNITED STATES DISTRICT JUDGE