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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Arthur Berger,

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No. CV-11-00468-PHX-NVW

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Plaintiff,

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**ORDER**

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vs.

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Showcase Automotive Limited  
Partnership, doing business as  
Camelback Volkswagen, Camelback  
Volkswagen-Subaru, Camelback Subaru,  
Camelback Volkswagen Subaru Mazda,  
and Showcase Motors, Inc., the general  
partner of Showcase Automotive Limited  
Partnership,

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Defendants.

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Before the Court is Defendants’ Rule 12(b)(1) Motion to Dismiss and Compel Arbitration. (Doc. 7.) On March 10, 2011, Plaintiff filed his complaint for damages against Defendants for “discrimination in the workplace based on race, religion and retaliation . . . under Title VII of the Civil Rights Act...and the Civil Rights Act of 1866 . . . .” (Doc. 1.) Defendants argue that this Court lacks subject matter jurisdiction over this matter because the parties agreed, in an arbitration agreement signed by Plaintiff, to “resolve by arbitration all statutory, contractual and common law claims or controversies, past, present or future, that arise out of or relate to [Plaintiff’s] hiring, employment, or termination of employment by [Camelback Volkswagen Subaru Mazda.]” (Doc. 7-1.) Defendant has therefore asked this Court to “dismiss Plaintiff’s Complaint with prejudice in its entirety[,]” order the parties to

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1 arbitration under the terms of the parties' arbitration agreement, and award Defendants their  
2 attorneys' fees and costs under the arbitration agreement<sup>1</sup> or A.R.S. § 12-341.01. (Doc. 7.)

3 Plaintiff does not dispute Defendants' contention that all of the claims raised in his  
4 complaint are subject to the arbitration agreement. Indeed, Plaintiff does not oppose  
5 arbitration of his claims; rather, he simply opposes his complaint being dismissed "with  
6 prejudice in its entirety" and Defendants' request for attorneys' fees and costs. Plaintiff  
7 argues that it is more consistent with the Federal Arbitration Act, 9 U.S.C. § 3, and the  
8 "practice of the Judges of this District" for the Court to either stay this action pending the  
9 arbitration or dismiss the action without prejudice and retain jurisdiction to later confirm any  
10 award that might result from the arbitration. (Doc. 8.) Plaintiff further argues that an award  
11 of attorneys' fees is inappropriate under A.R.S. § 12-341.01 because Plaintiff's claims arise  
12 under federal statutory law, not state contract law, and untimely under the arbitration  
13 agreement because the propriety of any fee award is itself subject to arbitration.

14 Because Plaintiff does not oppose arbitration, Defendants' motion will be granted with  
15 respect to Defendants' request that the parties be ordered to arbitration in accordance with  
16 the terms of the arbitration agreement. As to the disposition of this matter, the Court agrees  
17 with Plaintiff that this action should be stayed pending the arbitration. *See Bushley v. Credit*  
18 *Suisse First Boston*, 360 F.3d 1149, 1153 n.1 (9th Cir. 2004) (endorsing Second Circuit's  
19 approach of staying action pending arbitration because "dismissal renders an order  
20 appealable . . . [and] unnecessary delay of the arbitral process through appellate review is  
21 disfavored"). Finally, the Court will refer Defendants' request for an award of attorneys'  
22 fees and costs in connection with this motion to the arbitrator for resolution.

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24 <sup>1</sup>Paragraph 26 of the arbitration agreement provides: "Filing of Lawsuit: Either party may  
25 bring an action in any court of competent jurisdiction to compel arbitration under this  
26 Agreement. In the event a party files a lawsuit over a matter which is subject to arbitration  
27 under this Agreement, the other party shall give notice of the existence of this Agreement and  
28 if the lawsuit is not dismissed within ten (10) days receipt of that notice, the party filing the  
lawsuit shall be liable for any and all costs and attorneys' fees incurred in dismissing the  
lawsuit." (Doc. 7-1 at 7.)

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IT IS THEREFORE ORDERED that Defendants' Rule 12(b)(1) Motion to Dismiss and Compel Arbitration (Doc. 7) is denied with respect to the request to dismiss this action with prejudice and granted with respect to the request to compel arbitration.

IT IS FURTHER ORDERED that the parties are directed to arbitration of Plaintiff's claims in accordance with the terms of the parties' arbitration agreement.

IT IS FURTHER ORDERED that this action is stayed pending the outcome of arbitration pursuant to 9 U.S.C. § 3 and further order of this Court.

IT IS FURTHER ORDERED that the parties shall file a joint or separate status reports concerning the arbitration by November 10, 2011.

DATED this 10<sup>th</sup> day of May, 2011.

  
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Neil V. Wake  
United States District Judge