

1 under an arbitration clause, the court "shall on application of
2 one of the parties stay the trial of the action until such
3 arbitration has been had in accordance with the terms of the
4 agreement" A party seeking to compel arbitration has the
5 burden to show (1) the existence of a written arbitration
6 agreement between the parties and (2) the arbitration agreement
7 encompasses the dispute. Ashbey v. Archstone Prop. Mgmt., Inc.,
8 785 F.3d 1320, 1323 (9th Cir. 2015); see Attia v. The Neiman
9 Marcus Grp., Inc., Case No. SA CV 16-0504-DOC (FFMx), 2016 WL
10 9150570, at *3 (C.D. Cal. Oct. 18, 2016).

11 As to the first prong, a contractual right to
12 arbitration generally "may not be invoked by one who is not a
13 party to the agreement." Britton v. Co-Op Banking Grp., 4 F.3d
14 742, 744 (9th Cir. 1993). Here, Rackwise, Rackwise Funding II,
15 and Triple R-F entered into the Subscription Agreements.²
16 Defendant purportedly signed these agreements on Rackwise's
17 behalf in his corporate capacity, not in his individual capacity,
18 and defendant does not dispute that he is not a party to the
19 Subscription Agreements. Therefore, defendant cannot compel
20 Rackwise to arbitrate this dispute on this basis. See McCarthy
21 v. Azure, 22 F.3d 351, 356 (1st Cir. 1994) ("[A] person signing a
22 contract only in a corporate capacity . . . does not thereby
23 become a party to the agreement.").

24 "[A] litigant who is not a party to an arbitration
25 agreement may invoke arbitration under the FAA if the relevant

26 ² A statement of claims previously was filed on behalf of
27 Rackwise in FINRA arbitration (Docket No. 21-4); however, counsel
28 for both parties indicated that FINRA declined to arbitrate that
dispute.

1 state contract law allows the litigant to enforce the agreement."
2 Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1128 (9th Cir.
3 2013). Because New York law governs the terms of the
4 Subscription Agreements, (Subscription Agreement at 16), the
5 court looks to New York contract law to determine if defendant
6 can compel arbitration as a non-party.

7 Defendant argues that equitable estoppel and the third-
8 party beneficiary doctrines permit him, as a non-party to the
9 Subscription Agreements, to compel Rackwise to arbitrate this
10 dispute. However, defendant cites no New York cases or cases
11 interpreting New York contract law regarding the application of
12 equitable estoppel or the third-party beneficiary doctrine, and
13 does not explain how New York law permits him to compel
14 arbitration here under either theory. Thus, defendant fails to
15 meet his burden of establishing that he can compel arbitration
16 against Rackwise as a non-party to the Subscription Agreements.

17 Because defendant has not met his burden to show that
18 there was an arbitration agreement between the parties or that he
19 has standing as a non-party to compel arbitration, the court need
20 not address the second prong and will not compel arbitration.
21 Because the court will not compel arbitration, the court will
22 also not stay this case pending arbitration. Accordingly, the
23 court will deny defendant's Motion.

24 IT IS THEREFORE ORDERED that defendant's Motion to
25 compel arbitration and to stay action pending arbitration (Docket
26 No. 21) be, and the same hereby is, DENIED.

27 Dated: August 8, 2017



28 **WILLIAM B. SHUBB**
UNITED STATES DISTRICT JUDGE