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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BIGGE CRANE AND RIGGING CO.,  
Plaintiff,  
v.  
AGILITY PROJECT LOGISTICS, INC, et  
al.,  
Defendants.

Case No. [20-cv-01082-DMR](#)

**ORDER ON DEFENDANT AGILITY'S  
MOTION TO COMPEL  
ARBITRATION AND STAY ACTION**

Re: Dkt. No. 10

United States District Court  
Northern District of California

Plaintiff Bigge Crane and Rigging Co. (“Bigge”) filed an action in state court against Defendants Agility Project Logistics, Inc. (“Agility”), BP Products North America, Inc. (“BP”), and Jacobs Engineering Group, Inc. (“Jacobs”) alleging breach of contract and related claims. Agility removed the case to federal court and now moves to compel arbitration and to stay the action pending arbitration. [Docket No. 10.] BP and Jacobs do not oppose the motion. [Docket Nos. 23, 31.] Bigge does not oppose the motion to compel arbitration but argues that any arbitration proceedings should take place in the Northern District of California rather than Texas, which is the contractually-designated arbitration venue. [Docket No. 30.]

This matter is suitable for resolution without oral argument. Civ. L.R. 7-1(b). For the following reasons, the motion is granted. Any arbitration undertaken pursuant to the arbitration agreement shall take place within the Northern District of California.

**I. BACKGROUND**

This litigation stems from a construction project at an oil refinery in Washington, the “BP Cherry Point Coker Heater Project.” In approximately October 2017, BP entered into a contract with Jacobs for the replacement of coker heaters at the refinery. Jacobs, the direct contractor, then subcontracted with Agility to construct part of the project. On October 16, 2017, Agility and

United States District Court  
Northern District of California

1 Bigge entered into the “Transportation Service Agreement” or “TSA,” under which Bigge agreed  
2 to provide barge and heavy haul support services related to the project. Compl. ¶¶ 6-10, Ex. A  
3 (TSA). Bigge alleges that Agility failed to pay Bigge \$722,311.00 owed for work it performed  
4 under the TSA. Id. at ¶¶ 11, 14. The complaint alleges claims for breach of contract, breach of  
5 the covenant of good faith and fair dealing, monies due, and account stated against Agility. It also  
6 alleges a claim for quantum meruit against BP, Jacobs, and Agility.

7 The TSA includes a mandatory arbitration provision, which requires the arbitration of any  
8 dispute between Agility and Bigge as follows:

9 Any controversy or claim arising out of or relating to this contract, or  
10 breach thereof, shall be settled by mediation under the Procedures of  
11 the American Arbitration Association . . . If the mediation does not  
12 result in settlement of the dispute within 30 days after the initial  
13 mediation conference or if a party has waived its right to mediate any  
14 issues in dispute, then any unresolved controversy or claim arising out  
of or relating to this contract or breach thereof shall be settled by  
arbitration administered by the American Arbitration Association in  
accordance with its Rules then prevailing, and shall be conducted in  
Houston, Texas, unless the parties agree otherwise . . .

15 TSA § 14 (the “arbitration agreement”) (emphasis added). The TSA further provides that the  
16 agreement “shall be construed in accordance with the Laws of the State of Texas.” Id. at § 15.

17 Bigge filed the lawsuit in Alameda County Superior Court on January 7, 2020. With the  
18 consent of BP and Jacobs, Agility removed the action to this court on February 11, 2020. Agility  
19 now moves to compel arbitration and stay the action pending arbitration. BP and Jacobs filed  
20 statements of non-opposition to the motion.

21 Bigge does not dispute the validity of the arbitration agreement and does not dispute that  
22 the arbitration agreement applies to its claims. It opposes the motion on the limited issue of  
23 arbitral venue. Notwithstanding the TSA’s designation of Houston, Texas as the venue for any  
24 arbitration, Bigge contends that under the Federal Arbitration Act, 9 U.S.C. § 4, and applicable  
25 Ninth Circuit authority, this court lacks authority to compel arbitration outside this district.  
26 According to Bigge, any arbitration should take place in the Northern District of California.

27 **II. LEGAL STANDARD**

28 The Federal Arbitration Act (“FAA”) governs written arbitration agreements affecting

1 interstate commerce. See *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111-12 (2001).  
2 Enacted for the purpose of enforcing written arbitration agreements according to their own terms,  
3 the FAA embodies “the basic precept that arbitration ‘is a matter of consent, not coercion.’” *Stolt-*  
4 *Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 681 (2010) (quoting *Volt Info. Sciences,*  
5 *Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). Section 4 of  
6 the FAA ensures that “‘private agreements to arbitrate are enforced according to their terms,’”  
7 *Stolt-Nielsen*, 559 U.S. at 682 (quoting *Volt*, 489 U.S. at 479), by expressly authorizing a party to  
8 an arbitration agreement to petition a United States district court for an order directing that  
9 “arbitration proceed in the manner provided for in such agreement.” 9 U.S.C. § 4.

10 “After determining whether the contract containing the arbitration agreement evidences a  
11 transaction involving interstate commerce, and thus falls under the FAA, the court’s role then is  
12 limited to (1) determining whether a valid agreement to arbitrate exists and, if it does, (2) deciding  
13 whether the agreement encompasses the dispute at issue.” *Homestake Lead Co. of Missouri v.*  
14 *Doe Run Res. Corp.*, 282 F. Supp. 2d 1131, 1138 (N.D. Cal. 2003) (citing *United Steelworkers of*  
15 *Am. v. Warrior & Gulf*, 363 U.S. 574, 582 (1960)). “By its terms, the Act leaves no place for the  
16 exercise of discretion by a district court, but instead mandates that district courts shall direct the  
17 parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.”  
18 *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (citing 9 U.S.C. §§ 3, 4).

### 19 **III. DISCUSSION**

#### 20 **A. Motion to Compel Arbitration**

21 The parties dispute the appropriate forum for the arbitration in this case. Bigge argues that  
22 this court lacks authority to compel arbitration to take place in Houston, Texas, which is outside  
23 this district, even though that is the venue specified in the arbitration agreement. According to  
24 Bigge, the FAA mandates that any arbitration proceedings take place in this district. Agility  
25 responds that any arbitration should occur in Texas.

26 Section 4 of the FAA governs this dispute. It provides that a party may “petition any  
27 United States district court . . . for an order directing that such arbitration proceed in the manner  
28 provided for in such agreement.” 9 U.S.C. § 4. If the court finds that a valid agreement to

1 arbitrate exists, the court must “make an order directing the parties to proceed to arbitration in  
2 accordance with the terms of the agreement. The hearing and proceedings, under such agreement,  
3 shall be within the district in which the petition for an order directing such arbitration is filed.”  
4 *Id.* (emphasis added). Under Ninth Circuit law, Section 4 limits courts “to ordering arbitration  
5 within the district in which the suit was filed.” *Homestake*, 282 F. Supp. 2d at 1143 (citing  
6 *Continental Grain Co. v. Dant & Russell*, 118 F.2d 967, 968-69 (9th Cir. 1941)). “The Ninth  
7 Circuit has indirectly confirmed this interpretation . . . stating that ‘by its terms, § 4 only confines  
8 the arbitration to the district in which the petition to compel is filed.’” *Homestake*, 282 F. Supp.  
9 2d at 1143-44 (quoting *Textile Unlimited, Inc. v. A.BMH & Co., Inc.*, 240 F.3d 781, 785 (9th Cir.  
10 2001) (emphasis in original)). Therefore, this court cannot compel arbitration in Texas. See, e.g.,  
11 *Bencharsky v. Cottman Transmission Sys., LLC*, 625 F. Supp. 2d 872, 884 (N.D. Cal. 2008)  
12 (granting motion to compel arbitration “insofar as arbitration is to proceed in the Northern District  
13 of California” and denying motion to compel arbitration in Pennsylvania, the venue specified in  
14 the arbitration agreement); *Capelli Enterprises, Inc. v. Fantastic Sams Salons Corp.*, No. 5:16-  
15 CV-03401-EJD, 2017 WL 130284, at \*5 (N.D. Cal. Jan. 13, 2017) (granting motion to compel  
16 arbitration in the Northern District of California notwithstanding contrary venue provision in  
17 arbitration agreement); *Savetsky v. Pre-Paid Legal Servs., Inc.*, No. 14-03514 SC, 2015 WL  
18 4593744, at \*3 (N.D. Cal. July 30, 2015) (“Ninth Circuit precedent prevents the Court from  
19 ordering the parties to arbitrate in their chosen venue when, as here, the motion to compel  
20 arbitration is filed outside the district encompassing that venue.”).

21 In its reply, Agility contends that Bigge “mischaracterize[s]” its motion, that it did not  
22 move to compel arbitration in the Northern District of California, and that “under no  
23 circumstances should the Court order arbitration to proceed in California.” Reply 2, 3. According  
24 to Agility, “it is simply seeking an order staying the action pursuant to Section 3 of the FAA and  
25 requiring that if Bigge intends to pursue its claims that it must do so consistent with the terms of  
26 the TSA.” *Id.* at 7. In other words, Agility argues that it moved only to stay the litigation pending  
27 arbitration and did not actually move to compel arbitration. This is not a fair reading of its  
28 motion, which is entitled “Motion to Compel Arbitration and Stay Action Pending Arbitration.”

1 In its opening brief, Agility devoted the bulk of the legal analysis section to explaining why the  
2 two-part test for compelling arbitration is satisfied, that is, arguing that “a valid agreement to  
3 arbitrate exists” and that “the agreement encompasses the dispute at issue.” Mot. 6-11. Agility  
4 expressly argued that “[i]f the Court finds that the answers to those questions are ‘yes,’ the Court  
5 must compel arbitration” pursuant to Section 4 of the FAA. Mot. 7 (citation omitted). It also  
6 argued that “the [FAA] leaves no place for the exercise of discretion by a district court, but instead  
7 mandates that district courts shall direct the parties to proceed to arbitration on issues as to which  
8 an arbitration agreement has been signed.” Id. (citation and quotation marks omitted) (emphasis in  
9 original). Agility’s attempt to recast its motion solely as a motion to stay is not persuasive.

10 Accordingly, the motion to compel arbitration is granted. The Northern District of  
11 California is “the district in which [Agility’s] petition for an order directing [ ] arbitration is filed.”  
12 9 U.S.C. § 4. Therefore, any arbitration proceedings initiated pursuant to Bigge and Agility’s  
13 arbitration agreement shall occur within the Northern District of California.

#### 14 **B. Motion to Stay**

15 Agility also moves to stay the action in its entirety pending the completion of arbitration  
16 proceedings between Bigge and Agility. Where a dispute is subject to arbitration under the terms  
17 of a written agreement, the district court shall “stay the trial of the action until such arbitration has  
18 been had in accordance with the terms of the agreement.” 9 U.S.C. § 3. The Ninth Circuit has  
19 held that courts have discretion under Section 3 to dismiss claims that are subject to an arbitration  
20 agreement. *Sparling v. Hoffman Const. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988).

21 According to Agility, Bigge’s claims against BP and Jacobs, which are not parties to the  
22 arbitration agreement, are “premature pending resolution of the contractual claims against  
23 Agility.” Mot. 13. As no party objects to the stay, the court stays this action pending the outcome  
24 of arbitration proceedings between Bigge and Agility.

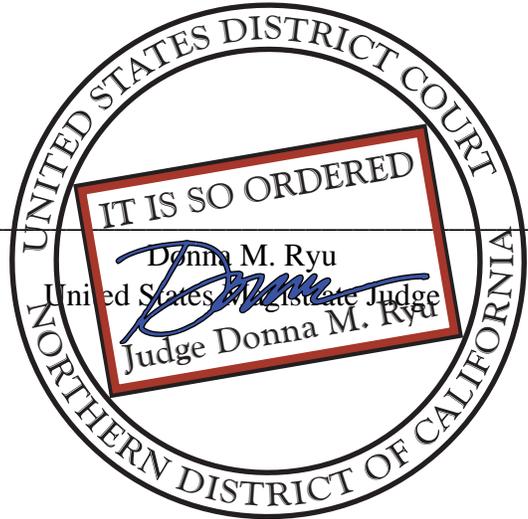
#### 25 **IV. CONCLUSION**

26 For the foregoing reasons, Agility’s motion to compel arbitration and stay the action  
27 pending arbitration is granted. Any arbitration undertaken pursuant to the arbitration clause shall  
28 take place within the Northern District of California. This action is stayed in its entirety pending

1 the final resolution of the arbitration. The clerk shall administratively close the case. Bigge and  
2 Agility shall file a joint status report within two weeks of the completion of any arbitration.

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4 **IT IS SO ORDERED.**

5 Dated: November 16, 2020



United States District Court  
Northern District of California

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