

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## ORDER

This case arises out of a stock purchase agreement to acquire Silicon Quest International, Inc. for \$1,880,000 cash and a promissory note worth \$1,815,600. Plaintiff Robin Richardson alleges Defendants breached the contract and an implied covenant of good faith and fair dealing by defaulting on payment of the note. Pending before the Court are Defendants' Motions to Dismiss for Improper Venue and Forum Non Conveniens or, alternatively, a Motion for a Stay of Proceedings (ECF No. 7). For the reasons given herein, the Court dismisses the case as a Motion to Compel Arbitration.

## I. FACTS AND PROCEDURAL HISTORY

Defendant MYW Holdings, LLC (“MYW”) is a California company, of which Defendant Siu Man Ng AKA “Johnny” Ng (“Ng”) is a managing member. Ng used MYW to purchase Silicon Quest International, Inc. (SQI) from Plaintiff Robin Richardson. MYW and Richardson entered a stock purchase and sale agreement (“SPA”) under which MYW would pay \$1,880,000

1 cash at closing and a promissory note worth \$1,815,600, including interest. (SPA, ECF No. 7-10,  
2 at 4–6). Defendants Ng, Powergate Semiconductors Company, Ltd, and Handle Electronics  
3 Company, Ltd allegedly agreed to guarantee MYW’s purchase of SQI. The SPA contains the  
4 following clause with no heading:

5 breach, termination, enforcement, interpretation or validity thereof, including the  
6 determination of the scope or applicability of this agreement to arbitrate, shall be  
7 determined by binding arbitration in the County of Santa Clara in California,  
8 before one arbitrator. The arbitration shall be administered by JAMS and in  
9 English. Judgment on the award may be entered in any court having jurisdiction.  
This clause shall not preclude parties from seeking provisional remedies in aid of  
arbitration from a court of appropriate jurisdiction. Each party will bear its own  
costs for arbitration, including attorney’s fees. The provisions of this paragraph  
shall survive any termination of this Agreement.

10 (*Id.* at 22).

11 After the purchase, SQI entered new employment contracts with Michael Lyu and Jack  
12 Snyder, officers at SQI. In December 2014 and January 2015, Lyu and Snyder brought two  
13 separate actions against SQI and Ng in the Superior Court of California in and for the County of  
14 Santa Clara, seeking enforcement of the contracts (Lyu Compl., ECF No. 7-2 at 2; Snyder  
15 Compl., ECF No. 7-2 at 17).<sup>1</sup> On May 1, 2015, Ng, SQI, and MYW filed a cross complaint  
16 against Lyu, Snyder, and Michael Richardson alleging, *inter alia*, breach of contract, fraudulent  
17 inducement to contract, and fraud. (Cross-Compl., ECF No. 7-1). They also filed an Ex Parte  
18 Application of Temporary Restraining Order seeking to prevent Lyu, Snyder, Mr. Richardson, or  
19 Plaintiff from taking action to enforce the SPA and related agreements. (TRO, ECF No. 7-6). On  
20 May 26, 2015, the California court denied the TRO request. (Order After Hearing, ECF No. 7-9).

21 Earlier, on April 28, 2015, Plaintiff filed this suit in the Second Judicial District Court of  
22 the State of Nevada, alleging that Defendants defaulted on the promissory note. (Compl., ECF  
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24 <sup>1</sup>The California court consolidated Lyu’s and Snyder’s actions into one case. (Order on Mot. to  
Consolidate, ECF No. 7-4).

1 No. 1-1). She claims breach of contract and breach of the covenant of good faith and fair dealing.  
2 (*Id.*). On July 13, 2015, Defendants removed Plaintiff's state suit to the U.S. District Court,  
3 District of Nevada. (Notice of Removal, ECF No. 1). Defendants now move to dismiss for  
4 improper venue and *forum non conveniens*, or, alternatively, to stay the proceedings.

5 **II. LEGAL STANDARDS**

6 The Federal Arbitration Act ("FAA") provides that contractual arbitration agreements  
7 "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity  
8 for the revocation of any contract." 9 U.S.C. § 2. Arbitration agreements are enforced under  
9 Sections 3 and 4 of the FAA, which provide "two parallel devices for enforcing an arbitration  
10 agreement." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).  
11 Section 3 gives courts the power to provide "a stay of litigation in any case raising a dispute  
12 referable to arbitration," while Section 4 empowers courts to provide "an affirmative order to  
13 engage in arbitration." *Id.*; 9 U.S.C. §§ 3–4.

14 The FAA "is a congressional declaration of a liberal federal policy favoring arbitration  
15 agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses*  
16 *H. Cone Mem'l Hosp.*, 460 U.S. at 24; *see Perry v. Thomas*, 482 U.S. 483, 489, (1987) (stating  
17 that the FAA "embodies a clear federal policy requiring arbitration" when there is a written  
18 arbitration agreement relating to interstate commerce).

19 Despite this strong federal policy in favor of arbitration, arbitration is a "matter of  
20 contract," and no party may be required to submit to arbitration "any dispute which he has not  
21 agreed so to submit." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 79 (2002) (quoting  
22 *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960)). If "the  
23 making of the arbitration agreement . . . [is] in issue," then the district court shall proceed to trial  
24

1 on the issue.<sup>2</sup> 9 U.S.C. § 4; *see also Sanford v. MemberWorks, Inc.*, 483 F.3d 956, 962 (9th Cir.  
2 2007). However, “[a] naked assertion . . . by a party to a contract that it did not intend to be  
3 bound by the terms thereof is insufficient to place in issue ‘the making of the arbitration  
4 agreement.’” *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co.*, 636 F.2d 51, 55 (3d Cir. 1980). To  
5 warrant a trial, a party’s “unequivocal denial that the agreement has been made, accompanied by  
6 supporting affidavits . . . in most cases should be sufficient.” *Id.* at 54–55 (ordering a jury trial  
7 when a party used a sworn affidavit to support its contention that a production manager had no  
8 authority to execute a contract containing an alleged arbitration clause); *see also Mazera v.*  
9 *Varsity Ford Mgmt. Servs., LLC*, 565 F.3d 997, 1002 (6th Cir. 2009) (finding that unlike in *Par-*  
10 *Knit Mills*, no material fact as to the validity of the agreement was in dispute). A court’s  
11 discretion for compelling arbitration is limited to a two-step process of “determining (1) whether  
12 a valid agreement to arbitrate exists, and if it does; (2) whether the agreement encompasses the  
13 dispute at issue.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir.  
14 2000). A party cannot be ordered to arbitrate unless there is “an express, unequivocal agreement  
15 to that effect.” *Samson v. NAMA Holdings, LLC*, 637 F.3d 915, 923 (9th Cir. 2011) (quoting  
16 *Par-Knit Mills*, 636 F.2d at 54).

17 When determining whether a valid agreement to arbitrate exists between the parties, “the  
18 liberal federal policy regarding the scope of arbitrable issues is inapposite.” *Comer v. Micor,*  
19 *Inc.*, 436 F.3d 1098, 1104 n.11 (9th Cir. 2006). Instead, federal courts “should apply ordinary  
20 state-law principles that govern the formation of contracts.” *First Options of Chicago, Inc. v.*  
21 *Kaplan*, 514 U.S. 938, 944 (1995). Under Nevada law, an enforceable contract “requires a  
22 manifestation of mutual assent in the form of an offer by one party and acceptance thereof by the  
23 other . . . [and] agreement or meeting of the minds of the parties as to all essential elements.”

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24 <sup>2</sup> The alleged defaulting party can demand a jury trial if it wishes. 9 U.S.C. § 4.

1 *Keddie v. Beneficial Ins., Inc.* 94 Nev. 418, 580 P.2d 955, 956 (1978) (Baltjer, C.J., concurring)  
2 (citations omitted)). Further, “[i]n interpreting a contract, we construe a contract that is clear on  
3 its face from the written language, and it should be enforced as written. A contract is ambiguous  
4 only when it is subject to more than one reasonable interpretation.” *State ex rel. Masto v. Second*  
5 *Judicial Dist. Court ex rel. Cnty. of Washoe*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009)  
6 (citations omitted).

7 **III. ANALYSIS**

8 Defendants argue the SPA contains a forum selection clause, which makes venue  
9 improper. Plaintiff argues the clause is not a forum selection clause but is possibly a valid  
10 arbitration clause. The Court finds the clause to be a valid arbitration clause.

11 To begin, the clause at issue is an arbitration clause, not a forum selection clause. A  
12 forum selection clause designates a specific court jurisdiction in which disputes must be litigated,  
13 *see, e.g., Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 575  
14 (2013) (examining a clause requiring litigation in either “the Circuit Court for the City of  
15 Norfolk, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk  
16 Division”) (citations omitted); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 587-88  
17 (1991) (examining a clause requiring litigation “in and before a Court located in the State of  
18 Florida”) (citations omitted), whereas an arbitration clause intentionally removes disputes from  
19 the jurisdiction of any court, *see, e.g., Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320,  
20 1322 (9th Cir. 2015) (examining a contractual clause requiring “final and binding arbitration and  
21 not by way of court or jury trial”). While for some purposes a court might describe an arbitration  
22 agreement as “a specialized kind of forum-selection clause,” *Scherk v. Alberto-Culver Co.*, 417  
23 U.S. 506, 519 (1974) (“An agreement to arbitrate before a specified tribunal is, in effect, a  
24 specialized kind of forum-selection clause that posits not only the situs of suit but also the

1 procedure to be used in resolving the dispute"); *see also Polimaster Ltd. v. RAE Sys., Inc.*, 623  
2 F.3d 832, 837 (9th Cir. 2010) (stating that “[t]he requirement of arbitration at the defendant’s site  
3 is effectively a forum selection clause” that “designat[es] . . . the forum for arbitration”), such a  
4 description does not shift the applicable law from the FAA to an analysis of improper venue or  
5 forum non conveniens.<sup>3</sup>

6 The clause at issue here “is a garden variety arbitration clause.” (Pl.’s Resp. to Mot. to  
7 Dismiss, 7, ECF No. 13). As evidence, the clause in the SPA uses the phrase “agreement to  
8 arbitrate” and requires “binding arbitration in the County of Santa Clara in California, before one  
9 arbitrator.” (SPA, 22). This language clearly refers to arbitration, not to the selection of a specific  
10 forum for litigation within a court’s jurisdiction. Because the clause is an arbitration clause, a  
11 more appropriate, and common, method for dismissal is a motion to compel arbitration. *See, e.g.*,  
12 *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257 (9th Cir. 2006) (considering a motion to compel  
13 arbitration based on a contractual clause requiring binding arbitration in Boston, MA). Thus,  
14 rather than require Defendants to file a separate motion, the Court converts this motion into a  
15 motion to compel arbitration. *See Gyptec Iberica v. Alstom Power Inc.*, No. 10-CV-0128, 2010  
16 WL 3951466, at \*1 (N.D. Ill. Oct. 5, 2010).

17 The Court must determine whether the arbitration clause is valid. The Court need not  
18 submit this issue to trial because the making of the arbitration agreement is not in issue. Plaintiff  
19 does not make even a “naked assertion . . . that [she] did not intend to be bound by the terms  
20 thereof.” *Par-Knit Mills, Inc.*, 636 F.2d at 55. Plaintiff admits the clause is an arbitration clause  
21 and merely argues that textually the clause is not valid.<sup>4</sup> She calls the clause “a mangled

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23 <sup>3</sup> Although in *Scherk* the Court referred to arbitration agreements as a type of forum selection  
24 clause, its analysis of the clause’s validity was based on the FAA. 417 U.S. at 510–520.

<sup>4</sup> Plaintiff argues “it is impossible to determine whether the contract even has a valid arbitration  
clause.” (Pl.’s Resp. to Mot. to Dismiss, 6, ECF No. 13).

1 alternative dispute resolution clause” and argues it is subject to more than one interpretation,  
2 (Pl.’s Resp. to Mot. to Dismiss, 6, ECF No. 13), but she concedes that “[t]he clause at issue here  
3 provides, at most, for ‘binding arbitration in the County of Santa Clara.’” (*Id.* at 8). Plaintiff does  
4 not unequivocally deny the arbitration agreement has been made. Thus, unlike the clause at issue  
5 in *Par-Knit Mills*, no material fact regarding the parties’ intent to bind themselves to the clause is  
6 in dispute here. Because the making of the agreement is not in issue, the Court proceeds to  
7 determine whether the arbitration clause is valid.

8 The primary issue in evaluating the arbitration clause’s validity is that it appears to be  
9 incomplete. Page 20 of the SPA ends with Section 15.4 and Page 21 begins with the alleged  
10 arbitration clause, which has no heading or section number and does not begin with an upper-  
11 case letter. (SPA, 21–22). The clause following the arbitration clause skips to Section 15.6. (*Id.*).  
12 Defendants seek to prove the arbitration clause is valid by referring to a previous version of the  
13 contract, which purportedly contained the entire clause. (See Defs.’ Mot. to Dismiss, 20–21, ECF  
14 No. 7-12). However, Section 15.6 contains an integration clause stating “[t]his Agreement  
15 constitutes the entire agreement between the parties pertaining to its subject matter, and it  
16 supersedes all prior or contemporaneous letters of intent, agreements, representations, and  
17 understandings.” (SPA, 21). Thus, the Court limits its review to the clause as written in the  
18 signed contract.

19 As written, the clause is a valid arbitration clause. The clause states that “breach,  
20 termination, enforcement, interpretation or validity thereof . . . shall be determined by binding  
21 arbitration in the County of Santa Clara in California, before one arbitrator.” (*Id.* at 22).  
22 Although the clause appears to be incomplete, it contains the essential elements of an arbitration  
23 clause (intent to arbitrate, arbitrable issues, location for arbitration). The clause is subject to only  
24 one reasonable interpretation—the parties agreed to binding arbitration in California to resolve

1 disputes regarding breach, termination, enforcement, etc. of the SPA. While the clause lacks a  
2 heading, it refers to itself as “this agreement to arbitrate.” (*Id.*). The parties also initialed each  
3 page of the SPA, and no pages appear to be missing. Further, even though the parties likely did  
4 not intend to include a “mangled” arbitration clause in the SPA, no party has challenged the  
5 intent to include the clause in some form, and no party has challenged the validity of the SPA as  
6 a whole. As written, the clause is sufficient to show the parties agreed to binding arbitration in  
7 California.

8 The agreement also undoubtedly encompasses the dispute at issue. The arbitration clause  
9 specifically refers to “breach” and “enforcement,” and Plaintiff’s claims include breach of  
10 contract with a request to enforce the terms of the SPA. As a result, the clause is a valid  
11 arbitration clause and should be enforced.

12 The Court grants Defendants’ converted motion to compel arbitration. It dismisses the  
13 case and orders the parties to undergo binding arbitration in the County of Santa Clara,  
14 California as the arbitration clause dictates. Defendants’ Motion to Dismiss for Forum Non  
15 Conveniens and their Motion for a Stay of Proceedings are denied as moot.

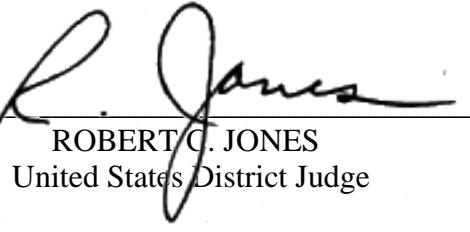
16 **CONCLUSION**

17 IT IS HEREBY ORDERED that Defendants’ Motion to Dismiss (ECF No. 7) is  
18 GRANTED as a Motion to Compel Arbitration, and the Clerk shall close the case.

19 IT IS FURTHER ORDERED that the parties shall submit to binding arbitration in the  
20 County of Santa Clara in California.

21 IT IS SO ORDERED.

22 DATED: This 13th day of November, 2015.

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24 ROBERT C. JONES  
United States District Judge