IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARIGNA TECHNOLOGY LIMITED, an Irish corporation, Plaintiff, v. LONGFORD CAPITAL FUND III, LP, A Delaware Limited Partnership, Defendant.	)	C.A. No. 1:23-cv-1441-GBW PUBLIC VERSION FILED JANUARY 15, 2024

DEFENDANT LONGFORD CAPITAL FUND III, LP'S
OPENING BRIEF IN SUPPORT OF ITS
MOTION TO COMPEL ARBITRATION AND DISMISS
OR, IN THE ALTERNATIVE, TO STAY PENDING ARBITRATION

OF COUNSEL:

John N. Gallo
Jeffrey S. Eberhard
Blake Edwards
GAIR GALLO EBERHARD LLP
1 East Wacker Drive
Suite 2600
Chicago, Illinois 60601
(312) 600-4900
jgallo@gairgallo.com
jeberhard@gairgallo.com
bedwards@gairgallo.com

Kevin G. Abrams (#2375)
John M. Seaman (#3868)
Christopher Fitzpatrick Cannataro (#6621)
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000
abrams@abramsbayliss.com
seaman@abramsbayliss.com
cannataro@abramsbayliss.com

Attorneys for Defendant
Longford Capital Fund III, LP

Dated: January 9, 2024

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Defendant Longford Capital Fund III, LP ("Longford"), by its undersigned counsel, respectfully moves to compel arbitration and dismiss this matter or, in the alternative, to stay this matter pending arbitration pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6) and the Federal Arbitration Act, 9 U.S.C. §§ 3–4.

NATURE AND STAGE OF THE PROCEEDINGS

In 2020, Plaintiff Arigna Technology Limited ("Arigna") granted Longford a lien over litigation settlement proceeds to protect Longford's rights to such proceeds as detailed in the agreement between Longford, Arigna, and Susman Godfrey L.L.P. ("Susman"). Three days after Arigna granted Longford the lien, Longford perfected its lien by publicly filing a UCC-1 financing statement. Now, more than three years later, Arigna seeks a declaratory judgment to limit the scope of Longford's lien. Arigna's effort to limit the scope of Longford's lien is merely the latest step in its bad-faith scheme to avoid its contractual obligations. Arigna's Complaint is improper because it ignores Arigna's agreement to resolve such disputes by arbitration.

Here are the salient facts:

- In 2020, Arigna asked Longford to provide litigation funding to pursue Arigna's patent enforcement efforts against [redacted] and other companies. (Exhibit 1, ¶¶ 24, 33-34.)
- Arigna engaged Susman to represent Arigna in its lawsuits against [redacted] and other companies. (Exhibit 1, ¶¶ 24, 33.)
- Longford agreed to fund Arigna's enforcement efforts and pay for attorneys' fees and expenses and ultimately paid [redacted] to Susman on behalf of Arigna. (Exhibit 1, ¶¶ 3, 24, 34.)
- Longford, Arigna, and Susman entered into an agreement under which, in exchange for paying attorneys' fees and expenses, Longford is entitled to a portion of all settlement proceeds. (Compl. Ex. A at pp. 3; Compl. Ex. B, Sections 3.4 and 4.1.)
- Longford, Arigna, and Susman agreed that Longford would share in all settlement proceeds received by Arigna *and Arigna's affiliates*, including proceeds directly from their claims *and* also any proceeds that are received *in connection with* their

claims, as a direct or indirect result of, part of, in connection with, relating to, or arising from settlement amounts, contracts or licenses. (Compl. Ex. B, Sections 2.32 and 4.1.)

- Arigna settled its lawsuit with [redacted] as part of a global settlement that included Arigna affiliates. (Exhibit 1, ¶¶ 11, 53, 58.)
- The settlement agreement provided for one lump sum payment of [redacted] and did not apportion the settlement proceeds in any way. (Exhibit 1, ¶¶ 58, 75.)
- The parties' agreement required all settlement proceeds to be deposited directly into a Joint-Order Escrow account controlled by Longford, Susman, and Arigna. (Compl. Ex. A at p. 6; Compl. Ex. B, Section 4.1.)
- Arigna directed [redacted] to instead pay the [redacted] directly to an offshore bank account controlled exclusively by an Arigna affiliate, [redacted] (Exhibit 1, ¶¶ 14, 59.)
- Based on the formula set forth in the parties' agreement, Longford is entitled to [redacted] from the [redacted] settlement. (Compl. Ex. B, Section 4.1; Exhibit 1, ¶ 8.)
- Arigna has failed to pay Longford any amount, let alone the full amount owed. (Exhibit 1, ¶¶ 17, 85.)
- [redacted]
- [redacted]

The parties' dispute will be resolved based on a complete factual record in due course. But that should not happen in this Court. The applicable agreements between Longford, Susman, and Arigna—those that Arigna attached as exhibits to its Complaint—contain mandatory arbitration provisions. Arigna's claim regarding the lien it granted to Longford is a small piece of a larger dispute regarding those parties' contractual rights and obligations. But *all* relevant disputes among and between Longford, Susman, and Arigna are subject to mandatory arbitration. Longford has already filed an arbitration demand against Arigna. (See **Exhibit 1** attached hereto, without exhibits.) That arbitration proceeding is the proper and contractually mandated forum in which to resolve the parties' disputes, including the narrow dispute raised by Arigna in this lawsuit.

Longford respectfully requests an order compelling Arigna to arbitrate and dismissing, or in the alternative staying, this case in favor of arbitration.

STATEMENT OF FACTS

A. The Parties' Funding Arrangement

Arigna engaged Susman to pursue sale, licensing, and enforcement efforts against [redacted] relating to Arigna's patents. Longford agreed to fund Arigna's efforts, and the parties' agreement was memorialized in two interrelated contracts—the Funding Agreement and the Engagement Agreement—which Arigna included as exhibits to its Complaint. The two-contract structure used by Arigna, Longford, and Susman for their arrangement was suggested by Arigna for the stated purpose of best addressing the tax laws of Ireland. In exchange for funding the attorneys' fees and expenses associated with Arigna's patent enforcement campaigns, Longford is entitled to a first-priority share of any proceeds that are recovered from [redacted] in the amounts specified in the Funding Agreement and Engagement Agreement. The parties have agreed that in the event that the terms of the two agreements are inconsistent, the terms in the Funding Agreement control. (Compl. Ex. B, Section 6.1(k).)

The Engagement Agreement is attached as an exhibit to and incorporated by reference in the Funding Agreement. Likewise, the Funding Agreement is attached as an exhibit to and incorporated by reference in the Engagement Agreement. Arigna further manifested its assent to the terms of the Funding Agreement by authorizing its agent, Susman, to enter into the Funding Agreement with Longford and to represent and warrant to Longford that Arigna had expressly agreed to its terms. (Compl. Ex. B, Section 6.1(n).)

B. Relevant Provisions Of The Funding Agreement And Engagement Agreement

Both the Funding Agreement and Engagement Agreement impose, among other obligations, a direct obligation on Arigna to pay Longford the agreed-upon portion of proceeds

from the [redacted] settlement. The Funding Agreement provides, "LCF [Longford] will receive from Claim Owner [Arigna] a portion of Proceeds," and that in exchange for funding the patent enforcement campaign, Arigna was transferring to Longford "an economic interest in the Proceeds." (Compl. Ex. B, Fourth WHEREAS Clause and Section 3.4.) Moreover, the Engagement Agreement provides that in the event any amounts become owed or payable to Arigna or its affiliates, then Arigna would reimburse Longford for the costs, expenses, and fees it expended and pay Longford a contingent percentage based on payment formulas set forth in the Funding Agreement and Engagement Agreement. (Compl. Ex. A at pp. 2-3.)

Arigna granted and assigned Longford a first-priority security interest in any settlement proceeds [redacted] paid or was obligated to pay Arigna or its affiliates. (Compl. Ex. A at p. 9.)

Longford's share of "Proceeds" from [redacted] was to be paid based on a formula comprised of *all* recoveries from [redacted] by both Arigna *and* any of Arigna's affiliates. (Compl. Ex. B, Section 4.1; Compl. Ex. A at pp. 2-3.) In particular, the Funding Agreement defines Proceeds to include any amount received or to be received by "Claim Owner or its Affiliates, in connection with the Claims." (Compl. Ex. B, Section 2.32.) And in specifying Arigna's payment obligation to Longford, the Engagement Agreement references and utilizes the definition of Proceeds that is set forth in the Funding Agreement. (Engagement Agreement at p. 3.) The broad definition of Proceeds in the Funding Agreement makes clear that as long as Arigna's patent claims against [redacted] were *part* of the settlement with [redacted] then the entire settlement amount constitutes Proceeds. In addition, the full [redacted] payment constitutes Proceeds, because the full amount was paid to an Arigna affiliate.[1]

[1] The Complaint ignores the definition of Proceeds in the Funding Agreement and instead recites a definition of Proceeds in the Engagement Agreement that Arigna contends is narrower and is limited to amounts received by Arigna itself. Even if Arigna's interpretation were correct,

The Funding Agreement and Engagement Agreement further contain several key protections to safeguard the Proceeds and ensure that Arigna complied with its payment obligations to Longford. First, the agreements require that any settlement amounts be paid into a Joint-Order Escrow account controlled by Longford, Arigna, and Susman. (Compl. Ex. B, Section 4.1; Compl. Ex. A at p. 6.) Arigna violated this obligation by directing [redacted] to pay all settlement proceeds to its affiliate in Ireland. Second, the agreements granted both Longford and Susman liens over the settlement proceeds. (Compl. Ex. A at p. 9.) The purpose of the liens was to prevent third parties, like [redacted] from paying out settlement proceeds to parties like Arigna's Irish affiliate, but Arigna already disregarded the lien by instructing [redacted] to do just that. Finally, in the event that Arigna or its affiliates received funds directly, both Arigna and Susman agreed to pay Longford the amount owed. (Compl. Ex. B, Section 3.4 and 8.1; Compl. Ex. A at pp. 2-3.) But, critically, Arigna agreed to indemnify Susman for the obligation it owes Longford in this regard. (Compl. Ex. A at p. 14.)

C. <u>The Parties' Agreement To Arbitrate</u>

Both the Funding Agreement and Engagement have broad mandatory arbitration clauses. Section 9.3 of the Funding Agreement provides that "All actions, disputes, claims and controversies under common law, statutory law, rules of professional ethics, or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and directly relating to: (a) this Agreement or any amendments and addenda hereto, or the breach, invalidity or termination hereof . . ." shall be arbitrable. [redacted]

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it is unavailing. First, the Funding Agreement provides that, in the event of a conflict with the Engagement Agreement, the terms of the Funding Agreement govern. (Compl. Ex. B, Section 6.1(k).) Second, the Engagement Agreement itself utilizes the broader definition of Proceeds as "set forth in the Funding Agreement" in discussing Arigna's payment obligation. (Compl. Ex. A at p. 3.)

[redacted] The Engagement Agreement also broadly provides that any "dispute arising out of, in connection with, or in relation to the interpretation, performance, or breach of this Agreement" shall be subject to arbitration "conducted in Houston, Texas, administered by and in accordance with the then-existing JAMS Comprehensive Arbitration Rules and Procedures." (Compl. Ex. A at pp. 15-16.) Both agreements further require the *arbitrator*—and *not* the Court—to decide the issue of whether a particular dispute is arbitrable. (Compl. Ex. B, Section 9.4; Compl. Ex. A at p. 16.) Arigna's filing of this lawsuit violates both of those provisions.

ARGUMENT

I. LEGAL STANDARD

"The Federal Arbitration Act (FAA) reflects the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts." *In re Remicade Antitrust Litig.*, 938 F.3d 515, 519 (3d Cir. 2019) (quotation marks and citation omitted). The FAA both authorizes and requires courts to stay litigation and compel arbitration to enforce valid agreements to arbitrate. "If any suit or proceeding be brought . . . upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement[.]" 9 U.S.C. § 3. Moreover, when a party moves to compel arbitration, "[t]he court shall hear the parties, and upon 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. "Dismissal of a declaratory judgment action because the dispute is covered by an arbitration provision is generally effected under Rule 12(b)(6)[.]" *Palcko*

v. Airborne Express, Inc., 372 F.3d 588, 597–98 (3d Cir. 2004) (quoting *Nationwide Ins. Co. v. Patterson*, 953 F.2d 44, 45 n.1 (3d Cir. 1991)).

"[B]efore referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists. But if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019). "[W]hen it is apparent, based on the face of a complaint, and documents relied upon in the complaint, that certain of a party's claims are subject to an enforceable arbitration clause, a motion to compel arbitration should be considered under a Rule 12(b)(6) standard without discovery's delay." *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764, 776 (3d Cir. 2013).

* * *

To determine whether an agreement in writing for arbitration exists, courts must refer to "traditional principles of state law." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31 (2009); *see also First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally . . . should apply ordinary state-law principles that govern the formation of contracts."). The Engagement Agreement contains a choice-of-law provision favoring Texas law. (Compl. Ex. A at pp. 16-17.) The Funding Agreement contains a choice-of-law provision favoring Illinois law. (Compl. Ex. B, Section 9.1.) But regardless of whether Texas, Illinois, or Delaware law applies, the outcome is the same under each state's law: Arigna has agreed to arbitrate disputes relating to the Engagement Agreement and the Funding Agreement under black-letter contract and agency principles. That is enough at this stage to require dismissal or a stay of this case.

II. BOTH THE FUNDING AGREEMENT AND THE ENGAGEMENT AGREEMENT CONTAIN MANDATORY ARBITRATION CLAUSES DELEGATING ARBITRABILITY TO THE ARBITRATOR

Under both the Funding Agreement and the Engagement Agreement, arbitration is binding and mandatory. *See Delta & Pine Land Co. v. Monsanto Co.*, 2006 WL 1510417, at *4 (Del. Ch. May 24, 2006) ("shall" indicates arbitration is mandatory). Both agreements also contain clauses clearly delegating questions of arbitrability to the arbitrator. *See Henry Schein v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019). The Funding Agreement states, "Any Dispute arising out of or relating to this Agreement, including the breach, termination, enforcement, interpretation or validity thereof, or *the determination of the scope or applicability of this Agreement to arbitrate*, shall be determined by arbitration." (Compl. Ex. B, Section 9.3 (emphasis added).) Under the Engagement Agreement, "The arbitrator, and not any court, shall have the exclusive authority to resolve any dispute or claim relating to the *interpretation, applicability, or enforceability of this Agreement and its arbitration clause*." (Compl. Ex. A at p. 16 (emphasis added).) Such language amounts to clear and unmistakable evidence of intent to arbitrate arbitrability. *See Kubala v. Supreme Prod. Servs., Inc.*, 830 F.3d 199, 204 (5th Cir. 2016); *GTSI Corp. v. Eyak Tech., LLC*, 10 A.3d 1116, 1119–20 (Del. Ch. 2010) ("By stating that the members 'shall' arbitrate 'any dispute . . . including the validity, scope and enforceability of these arbitration provisions,' the Arbitration Provision clearly and unmistakably assigns to the arbitrator the task of determining substantive arbitrability.").

Moreover, the agreements reference arbitration to be administered and conducted under particular rules. That language operates to incorporate those rules and constitutes clear and unmistakable evidence that the parties intended to delegate arbitrability to the arbitrator. *See James & Jackson, LLC v. Willie Gary LLC*, 906 A.2d 76, 80–81 (Del. 2006); *GreenStar IH Rep, LLC v.*

Tutor Perini Corp., 2017 WL 715922, at *6 (Del. Ch. Feb. 23, 2017) (JAMS); *Cooper v. WestEnd Cap. Mgmt., LLC*, 832 F.3d 534, 546 (5th Cir. 2016) (JAMS).

III. THE ARBITRATION PROVISIONS COVER ALL RELEVANT DISPUTES AMONG THE PARTIES, INCLUDING THE CLAIMS RAISED IN ARIGNA'S COMPLAINT

The subject of Arigna's claim—the lien Arigna granted to Longford—is within the scope of the arbitration provisions. The arbitration provisions cover, among other things, disputes "relating to," "arising out of," and "in connection with" the Funding Agreement and Engagement Agreement and the performance and breach thereof. (Compl. Ex. B, Section 9.3; Compl. Ex. A at pp. 15-16.) Arigna granted Longford the lien in the Engagement Agreement itself, so disputes about the extent and scope of that lien relate to, arise out of, and are in connection with the Engagement Agreement. *Cf. Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406 (1967) (arbitration provisions covering claims "arising out of or relating to the agreement" are "broad").

Moreover, the dispute about the lien is part of a broader dispute generally among Longford, Arigna, and Susman regarding the [redacted] settlement and the parties' respective shares of the settlement proceeds. All the parties' rights and obligations concerning those issues also arise under both the Funding Agreement and Engagement Agreement. In other words, the *entire* dispute falls within the scope of the arbitration provisions. Indeed, Arigna's Complaint makes that point by referencing, attaching, and integrating both the Funding Agreement and Engagement Agreement and alleging that Longford relies on the agreements in support of its position.[2] (Compl. ¶¶ 7-10, 15.)

[2] Documents integral to a complaint, whether attached to it or not, may be considered at the motion-to-dismiss stage. *See, e.g.*, *Doe v. Univ. of Scis.*, 961 F.3d 203, 208 (3d. Cir. 2020) ("In addition, a document integral to or explicitly relied upon in the complaint may be considered . . . ." (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997));

IV. ARIGNA MANIFESTED ASSENT TO THE AGREEMENTS CONTAINING THE ARBITRATION PROVISIONS

Whether a party agreed to arbitrate is fundamentally a question of whether the party manifested assent to be bound by the agreement containing the arbitration provision. *Rachal v. Reitz*, 403 S.W.3d 840, 845 (Tex. 2013); *MZM Constr. Co., Inc. v. New Jersey Bldg. Laborers Statewide Benefit Funds,* 974 F.3d 386, 397–98 (3d Cir. 2020). Arigna manifested its assent to the Engagement Agreement and the Funding Agreement and their arbitration provisions in at least four ways, each of which shows Arigna's agreement to arbitrate.

A. The Engagement Agreement And The Funding Agreement Incorporate Each Other And Form A Single Agreement

"[I]nstruments pertaining to the same transaction may be read together to ascertain the parties intent," and "in appropriate instances, courts may construe all the documents as if they were part of a single unified instrument." *Fort Worth Indep. Sch. Dist. v. Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000); *see also BAYPO LP v. Tech. JV, LP*, 940 A.2d 20, 27 (Del. Ch. 2007) ("the court must read the Sale Agreement, the License Agreement, and the PO Partnership Agreement together with the MTA as one document, bound by the arbitration provision"). Specifically, "[a] valid agreement to arbitrate exists when a signed contract incorporates by reference another document containing the arbitration clause." *LDF Constr., Inc. v. Tex. Friends of Chabad Lubavitch, Inc.*, 459 S.W.3d 720, 728 (Tex. App. 2015); *see also R.J. O'Brien & Assocs., Inc. v. Pipkin*, 64 F.3d 257, 260–61 (7th Cir. 1995). "This rule applies even when the document containing the arbitration agreement is unsigned." *LDF Constr., Inc.*, 459 S.W.3d at 728. "Additionally . . . there is no requirement that the signed contract specifically refer to the arbitration clause for the clause to be

Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint[,] and matters of public record.").

enforceable." *Id.* at 729. In fact, the incorporated document containing the arbitration provision need not even be attached to the signed contract, so long as the incorporated document is referenced by name. *Id.*; *Gray & Co. Realtors, Inc. v. Atl. Housing Fdn., Inc.*, 228 S.W.3d 431, 436 (Tex. App. 2007).

Here, Arigna's signed Engagement Agreement is not only replete with references to the Funding Agreement but also attaches the Funding Agreement as an exhibit. *Castroville Airport, Inc. v. City of Castroville*, 974 S.W.2d 207, 211–12 (Tex. App. 1998) (exhibits to settlement memorandum "became part" of the settlement memorandum under doctrine of incorporation by reference). And there is no rational or practical way to read the Funding Agreement or Engagement Agreement separately from each other. Instead, the Funding Agreement and the Engagement Agreement are inextricably intertwined and should be read in tandem. Thus, the provisions of both agreements are part of the contract to which Arigna agreed, and in signing the Engagement Agreement, Arigna manifested its assent to the Funding Agreement and to arbitration with both Longford and Susman.

B. Arigna Authorized And Approved The Funding Agreement Through Its Agent, Susman

Arigna made Susman its agent through the Engagement Agreement. Susman, in turn, used its authority to bind Arigna to the Funding Agreement. *See In re Rotavirus Vaccines Antitrust Litig.*, 30 F.4th 148, 159 (3d Cir. 2022) (agents' signing of agreement containing arbitration agreement obligated principals to arbitrate). The Funding Agreement expressly provides that Arigna "has given consent to the funding by [Longford] to [Susman] and has agreed to pay [Longford] a portion of the Proceeds as specified below." (Compl. Ex. B, fifth WHEREAS clause.) Moreover, Susman represented and warranted to Longford that "[Susman] has disclosed this Agreement to Claim Owner [Arigna], and Claim Owner has consented to its terms . . . and

authorized [Susman] to execute it." (*Id.*, Section 6.2(n).) Therefore, Arigna, as principal, authorized its agent, Susman, to execute the Funding Agreement and bind it to the terms of the Funding Agreement, including the agreement to arbitrate disputes. And Susman, as agent, represented and warranted to Longford that its principal, Arigna, had so agreed to be bound. Arigna is therefore obligated to arbitrate any dispute with Longford.

C. Longford Is A Third-Party Beneficiary Of The Engagement Agreement And Therefore Is Entitled To Enforce Its Arbitration Provision

As a third-party beneficiary of the Engagement Agreement, Longford is entitled to enforce the Engagement Agreement's arbitration provision. "A third-party beneficiary may enforce a contract to which it is not a party if the parties to the contract intended to secure a benefit to that third party and entered into the contract directly for the third party's benefit." *In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 677 (Tex. 2006); *see also Appforge, Inc. v. Extended Sys., Inc.*, 2005 WL 705341, at *9 (D. Del. Mar. 28, 2005); *Continental Cas. Co. v. Am. Nat'l Ins. Co.*, 417 F.3d 727, 734–35 (7th Cir. 2005). The principle applies to arbitration provisions. *See Arthur Andersen LLP*, 556 U.S. at 631 (traditional principles of state law allow a contract—including arbitration agreements—to be enforced by or against nonparties through, among others, "third-party beneficiary theories"); *In re Palm Harbor Homes, Inc.*, 195 S.W.3d at 677.

The Engagement Agreement incorporates the Funding Agreement in whole and the payment provisions therein and expressly imposes rights and obligations as between Arigna and Longford, including a first-priority security interest granted by Arigna to Longford in the settlement proceeds at issue here. The plain language of the Engagement Agreement makes clear that Arigna and Susman intended to secure a direct benefit to Longford—payment of the contingent percentages to Longford pursuant to the terms of the Funding Agreement. (Compl. Ex. A at 3–6.) Arigna has acknowledged and alleges that Longford's position based on the lien arises

under the Engagement Agreement. (Compl. ¶ 15.) Longford is therefore entitled to enforce the Engagement Agreement's arbitration provision as a third-party beneficiary of the Engagement Agreement.

D. Arigna Received Direct Benefits From The Funding Agreement And Is Estopped From Refusing Arbitration

Under the Funding Agreement, Longford has paid Arigna's attorneys' fees and expenses—[redacted]—to fund Arigna's patent enforcement efforts. Arigna cannot avail itself of the benefits of the Funding Agreement with one hand and repudiate the Funding Agreement's obligation to arbitrate with the other. "[A] nonparty may be compelled to arbitrate if it deliberately seeks and obtains substantial benefits from the contract itself." *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 132 (Tex. 2005). "Estoppel can bind a non-signatory to an arbitration clause when that non-signatory has reaped the benefits of a contract containing an arbitration clause." *Griswold v. Coventry First LLC*, 762 F.3d 264, 272 (3d Cir. 2014); *see also Elsasser v. DV Trading, LLC*, 444 F. Supp. 3d 916, 928–29 (N.D. Ill. 2020). Having received the benefits of the Funding Agreement, Arigna is bound by the Funding Agreement's arbitration provision under the doctrine of direct-benefits estoppel.

V. BECAUSE LONGFORD'S, ARIGNA'S, AND SUSMAN'S CLAIMS ARE ALL INTERTWINED, AND BECAUSE AT LEAST SOME OF THOSE CLAIMS ARE ARBITRABLE, ARIGNA'S COMPLAINT CANNOT PROCEED

Arigna owes direct obligations to Longford and agreed to arbitrate directly with Longford. But even if that were in doubt, the Complaint should still be dismissed or stayed pending arbitration. If nothing else, Arigna can hardly contest that: (1) Longford and Susman agreed to arbitrate claims, (2) Susman and Arigna agreed to arbitrate claims, and (3) those claims involve the same facts and issues, namely, the settlement with [redacted] and how the settlement proceeds should be distributed.

When, as here, there are claims that are arbitrable and other claims that potentially are not but are nevertheless intertwined with the arbitrable claims, the proper approach is to compel arbitration and dismiss or stay any potentially non-arbitrable claims pending the resolution of the arbitration. *Al-Haddad Bros. Enters., Inc. v. M.S. Agapi*, 551 F. Supp. 956, 960 (D. Del. 1982) (staying entire proceeding where certain related claims were arbitrable); *Salzman v. Canaan Cap. Partners, L.P.*, 1996 WL 422341 (Del. Ch. July 23, 1996) (same). That result is mandated by the strong federal policy favoring arbitration embodied in Section 3 of the Federal Arbitration Act and by the court's inherent power to manage its own docket on the basis of principles of "comity, efficiency, [and] common sense." *Legend Natural Gas II Holdings, LP v. Hargis*, 2012 WL 4481303, at *4 (Del. Ch. Sept. 28, 2012).

Courts routinely stay claims in court pending the completion of arbitration under those principles. *Id.*; *Woodruff v. Dollar General Corp.*, 2022 WL 17742359, at *5 (D. Del. Dec. 19, 2022). A stay is particularly appropriate, when, as here, the relevant arbitration provisions delegate arbitrability to the arbitrator. *See I.U. North Am. Inc. v. Allianz Underwriters Ins. Co.*, 2023 WL 8005281, at *2 (D. Del. Nov. 17, 2023) (staying case pending arbitrator's arbitrability determination); *Woodruff*, 2022 WL 17742359, at *5 (same). [redacted] Thus, all three relevant parties will be arbitrating about the very issue Arigna raises in its Complaint, and judicial-economy and comity principles weigh against permitting Arigna to proceed with parallel arbitral and judicial proceedings on the same issues. *Digene Corp. v. Ventana Med. Sys., Inc.*, 316 F. Supp. 2d 174, 185 (D. Del. 2004) (staying proceedings on non-arbitrable claims pending outcome of

arbitration of arbitrable claims "to prevent this case from moving forward on two tracks simultaneously").

CONCLUSION

For the foregoing reasons, Longford's motion should be granted.

OF COUNSEL:

John N. Gallo
Jeffrey S. Eberhard
Blake Edwards
GAIR GALLO EBERHARD LLP
1 East Wacker Drive
Suite 2600
Chicago, Illinois 60601
(312) 600-4900
jgallo@gairgallo.com
jeberhard@gairgallo.com
bedwards@gairgallo.com

/s/ Christopher Fitzpatrick Cannataro
Kevin G. Abrams (#2375)
John M. Seaman (#3868)
Christopher Fitzpatrick Cannataro (#6621)
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000
abrams@abramsbayliss.com
seaman@abramsbayliss.com
cannataro@abramsbayliss.com

Attorneys for Defendant
Longford Capital Fund III, LP

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