**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**
**Judge Daniel D. Domenico**

Civil Action No. 1:24-cv-02757-DDD-NRN

SOAR.EARTH LTD, an Australian Limited Liability Company,

Plaintiff,

v.

MARK W. MAHAFFIE (A/K/A MARK W. GRETENCORD), an individual;
ISSUER SOLUTIONS LLC, a Colorado Limited Liability Corporation;
ZAKAR LLC, a Florida Limited Liability Corporation; and
STELAMAR, INC., a Colorado Corporation,

Defendants.

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**ORDER GRANTING MOTION TO COMPEL ARBITRATION**

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Defendants have moved to compel arbitration of Plaintiff's claims pertaining to their failed contractual arrangement. Because Defendants have shown that Plaintiff's claims fall within the broad ambit of an expansive arbitration provision, and Plaintiff alleges in its complaint that the non-signatory Defendants are alter egos of the entity that did sign the agreement, Defendants' motion is granted and this case is stayed pending the outcome of arbitration.

## BACKGROUND

Plaintiff in this case is an Australian startup aiming to "build a revolutionary new digital atlas of the world by allowing individuals and organizations to host and share their maps and satellite images, building beyond the impact made by Google Earth nearly two decades ago to improve access to map resources for consumers and improve global

education." Dkt. 1 ¶ 2. Around March 2023, Plaintiff alleges it was introduced to Defendant Mark Mahaffie, whose services it subsequently retained in order to help it "complet[e] a direct listing of Soar on NASDAQ" and to "assist[] Soar in redomiciling to Delaware, because it was an Australian startup looking to move into the U.S. to expand its operations and access U.S. capital markets." *Id.* ¶¶ 27–28. Plaintiff alleges that the three other named defendants in this case—Issuer Solutions, Zakar, and Stelamar—are "mere alter egos" for Mahaffie and that he is the sole member of these "shell entities." *Id.* ¶¶ 7, 17.

On June 12, 2023, after "several months of correspondence" and negotiations, Plaintiff and Issuer Solutions entered into a "Capital Markets Advisory Agreement" under which Issuer Solutions was obligated to provide Plaintiff consulting services, in exchange for a $15,000 monthly fee, to support its efforts to list the company on NASDAQ and change its corporate domicile from Australia to Delaware. *Id.* ¶¶ 29–30, 35. At the same time, Plaintiff and Stelamar agreed to a warrant instrument whereby, for $5,000, Stelamar could acquire up to 10% of Plaintiff's outstanding ordinary shares on a fully diluted basis as of the time of NASDAQ listing for the price of $0.001 per share. *Id.* ¶ 35; Dkt. 19-2 at 2–3. In the end, however, neither agreement panned out, and on October 4, 2024, Plaintiff filed suit in this case. Dkt. 1. The parties now trade allegations about who was at fault for these failures as well as the proper forum for the resolution of this dispute.

Plaintiff, for its part, brings seven causes of action all essentially alleging that it was fraudulently induced to enter the Capital Markets Advisory Agreement based on false statements and material omissions about Mahaffie's background and expertise. *See generally* Dkt. 1. It claims that Defendants lied about having experience relevant either to Plaintiff's desire for direct listing on NASDAQ or its desire to redomicile

from Australia to Delaware, and that Mahaffie intentionally omitted the fact that he had "a history of civil penalties and cease-and-desist orders issued by a state securities regulator." *Id.* ¶¶ 33, 45. Had it known these facts, Plaintiff claims it "would not have entered into the CMA[.]" *Id.* ¶ 44.

Defendants, on the other hand, claim that Plaintiff created "huge and material delays" in an attempt to thwart Issuer Solutions' performance under the agreement and "the key objectives of raising a minimum of $2 million and accomplishing Soar.Earth's listing on NASDAQ." Dkt. 19 at 5–6. They also claim that Plaintiff "failed and refused to honor Issuer Solutions' April 5, 2024 exercise of additional shares under the Warrant." *Id.* at 6.

The core dispute at this stage, however, is not the merits of these claims, but whether this dispute may be heard in this court at all. As Defendants stress in their motion to compel arbitration, Dkt. 19, the Capital Markets Advisory Agreement contains a provision subjecting "[a]ll disputes between or among the parties under or relating to this Agreement" to binding arbitration. Dkt. 19 at 7. The question before me now is whether this provision compels me to send Plaintiff's claims to arbitration despite the fact that only Issuer Solutions is a signatory to the agreement and the fact that the separate Warrant agreement states that the parties "irrevocably consent[] to the exclusive jurisdiction and venue of courts of the State of Colorado and the United States District Court for the District of Colorado in connection with any matter based upon or arising out of this Warrant[.]" Dkt. 32 at 7.

## DISCUSSION

### I. The complaint's allegations fall within the scope of the arbitration agreement.

The Capital Markets Advisory Agreement to which the parties agreed contains a broad arbitration clause which creates a presumption of arbitrability for all claims related to the Agreement. Because the allegations in Plaintiff's complaint fundamentally pertain to this Agreement—not the Warrant—they are arbitrable, even despite the fact that they allege Plaintiff was fraudulently induced to enter into the Agreement in the first place.

#### A. The arbitration language is broad and creates a presumption of arbitrability.

The broad language of the Agreement's arbitration clause—which states that "[a]ll disputes between or among the parties under or relating to this Agreement" shall be subject to binding arbitration—is precisely the sort of provision that the Tenth Circuit has held creates a presumption of arbitrability.[1] Dkt 19-1 at 5; *Cavlovic v. J.C. Penney Corp.*, 884 F.3d 1051, 1059 (10th Cir. 2018) (applying Texas law to find that an agreement covering all claims "arising from or relating to" the agreement "creates a presumption in favor of arbitrability"); *see also Chelsea Fam. Pharmacy, PLLC v. Medco Health Sols., Inc.*, 567 F.3d 1191 (10th Cir. 2009) ("The ordinary meaning of the phrase 'relating to' is broad."). Though "[d]etermining that a provision is broad does not end the

[1] As Plaintiff notes in its complaint, both federal question and diversity jurisdiction are present in this case. Dkt. 1 ¶ 19–20. Whether state or federal substantive law applies therefore depends on the claim at issue. As the Supreme Court has noted, however, "[w]hen 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." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

inquiry," *Vaughn v. JP Morgan Chase & Co.*, 707 F.Supp.3d 1042, 1049 (D. Colo. 2023), this finding does imply that "arbitration of even a collateral matter will be ordered if the claim alleged implicates issues of contract construction or the parties' rights and obligations under it." *Cummings v. FedEx Ground Package Sys., Inc.* 404 F.3d 1258, 1261 (10th Cir. 2005) (citation omitted).

**B. The complaint's allegations fundamentally pertain to the Capital Markets Advisory Agreement.**

The broad arbitration clause is implicated in this case because Plaintiff's allegations fundamentally pertain to the Capital Markets Advisory Agreement. Indeed, each of Plaintiff's seven claims contain some version of the allegation that "Soar would not have entered into the CMA had it known the Defendants lacked any relevant experience or qualifications[.]" Dkt. 1 ¶ 64; *see also id.* ¶¶ 77, 85, 90, 96, 102, 110. This is thus not the type of case where the broad arbitration provision invoked by Defendants has only a tangential relationship to Plaintiff's claims. *Cf Cavlovic,* 884 F.3d at 1060 (finding broad arbitration provision was only peripherally related to the claims at issue); *Coors Brewing Co. v. Molson Breweries*, 51 F.3d 1511, 1516 (10th Cir. 1995) ("[W]ith respect to the alleged wrong, it is simply fortuitous that the parties happened to have a contractual relationship.").

That the Warrant contains a jurisdiction and venue provision, as Plaintiff stresses, is irrelevant. For one, Plaintiff is incorrect that this provision supersedes the arbitration clause in the Agreement. Courts in this District and Colorado state courts have recognized a general rule that a "choice of law or choice of forum provision [] does not supersede an arbitration clause." *Weixel v. Rivard*, No. 1:20-cv-01595-RBJ, 2021 WL 5569793, at *6 (D. Colo. Mar. 26, 2021) (citing *In re Marriage of Dorsey*, 342 P.3d 491, 494 (Colo. App. 2014)). And in this case, since the

Agreement and Warrant were signed at the same time, it would be borderline nonsensical to conclude, as Plaintiff suggests, that the latter's jurisdiction provision completely superseded the former's arbitration provision. Dkt. 32 at 13 ("The Warrant therefore superseded. . . the Arbitration Provision with respect to Soar's claims, and provides this Court with exclusive jurisdiction in connection with 'any matter based upon,' 'arising out of,' or 'contemplated' by, the Warrant."). To reach this inference, I would have to find that the parties agreed to a broad arbitration provision in one instrument and simultaneously overwrote it in another. A far simpler—and more sensical—interpretation is that the parties merely intended for any non-arbitrable matters arising exclusively from the Warrant to be brought in the District of Colorado. Indeed, the fact that the jurisdiction and venue clause in the Warrant omits the broad "related to" language present in the Agreement suggests this clause was meant to be narrower than the arbitration provision, and that, if anything, the jurisdiction provision would be superseded by the arbitration provision in close cases—not the other way around.

Further, and contrary to Plaintiff's contention that all of its claims "directly implicate the Warrant," Dkt. 32 at 5, the complaint only mentions the warrant in a handful of places, and in a majority of these instances, only in connection with the Agreement. *See, e.g.*, Dkt. 1 ¶ 114 ("Plaintiff relied upon these misstatements and omissions of material fact in entering into the CMA and selling the Warrant to Defendants."). In fact, Plaintiff itself characterizes the Warrant as stemming directly from the Agreement: it refers to the Warrant both as one of "its obligations under the CMA," *Id.* ¶ 35, and as an instrument which was sold "pursuant to" the CMA. *Id.* ¶ 110. So even if the jurisdiction and venue provision did supersede the arbitration provision with respect to the Warrant, that would not affect the outcome here, as the focus of the complaint is the Agreement, and the Warrant is only mentioned insofar as

it is connected thereto. *See, e.g.*, *id.* ¶ 113 ("Defendants made these misstatements and omissions of material fact with the intent to induce Soar to enter into the CMA, including the sale to Stelamar of the Warrant."). In other words, as Defendants state, the Agreement is the memorialization of the very deal that Plaintiff is trying to attack in its Complaint, so its broad arbitration provision should apply. Dkt. 34 at 4; *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (emphasizing that close cases should be resolved in favor of arbitration given the "liberal federal policy favoring arbitration agreements").

**C. Fraud in the inducement claims are arbitrable.**

Defendants are also correct that Plaintiff's claims—which allege fraudulent inducement—are arbitrable. Though these claims go to the formation of the contract itself, not any duties or obligations that are owed under it, the Tenth Circuit has been clear that "a claim of fraud in the inducement may be resolved by arbitration." *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953 (10th Cir. 1992) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967)). While it is true that a claim that the arbitration provision itself was obtained by fraud might not be subject to arbitration, *see id.*, that is not what Plaintiff alleges here. There is thus no doubt—given the breadth of the arbitration clause at issue and the nature of Plaintiff's allegations—that Plaintiff's claims must be sent to arbitration.[2]

[2] Plaintiff's securities fraud and Colorado Consumer Protection Act claims are appropriate for arbitration for the same reason as are the other claims—they fundamentally stem from the allegation that "Defendants engaged in [] unfair and deceptive trade practices" and "made these misstatements and omissions of material fact with the intent to induce Soar's reliance on them, and to induce Soar to enter into the CMA[.]" Dkt. 1 ¶¶ 104, 113.

**II. The arbitration provision is enforceable with respect to claims against all four defendants.**

Though only Issuer Solutions is technically a signatory to the Agreement, Plaintiff specifically alleges that all of the Defendants are "mere alter egos" of each other. Dkt. 1 ¶ 4. This is one of the enumerated exceptions to the general rule that a non-signatory cannot enforce an arbitration agreement. *Santich v. VCG Holding Corp.*, 443 P.3d 62, 65 (Colo. 2019) (holding that the "limited circumstances" in which a non-signatory may enforce an arbitration agreement include: "(1) incorporation of an arbitration provision by reference in another agreement; (2) assumption of the arbitration obligation by the nonsignatory; (3) agency; (4) veil-piercing/alter ego; (5) estoppel; (6) successor-in-interest; and (7) third-party beneficiary"). By alleging that the defendant entities are alter egos of each other in its complaint, Plaintiff has conceded the point, despite its best efforts to backtrack in response to Defendants' motion to compel arbitration.

**CONCLUSION**

It is ORDERED that:

Defendants' Motion to Compel Arbitration, **Dkt. 19**, is **granted**; and

This case is **stayed** pending the outcome of arbitration. The parties shall file joint status reports regarding the status of the arbitration every **three months**, starting June 1, 2025, and within **two weeks** upon termination of the arbitration proceedings.

DATED: April 24, 2025

BY THE COURT:

Daniel D. Domenico
United States District Judge