NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5403-12T4

POP TEST CORTISOL, LLC, a
New Jersey Limited Liability
Company,

Plaintiff-Appellant,

v.

MERCK & CO., INC., a New Jersey
Corporation; MERCK SHARP & DOHME
CORP. (D/B/A or as its interests
may appear); N.V. ORGANON, a
Naamloze Vennootschap organized
under the laws of the Netherlands,

Defendants-Respondents,

and

C. RIK BROEKKAMP, ESQ.; BERNARD
(ARD) PEETERS; and CHARDON PHARMA,
a Foreign Jural Entity,

Defendants.

Argued March 26, 2014 – Decided April 28, 2014

Before Judges Waugh and Nugent.

On appeal from the Superior Court of New Jersey, Chancery Division, General Equity Part, Bergen County, Docket No. C-0076-13.

Ernest R. Nuzzo argued the cause for appellant.

Jeffrey M. Greilsheimer (Hughes Hubbard & Reed LLP) of the New York bar, admitted pro hac vice, argued the cause for respondents (Hughes Hubbard & Reed LLP, attorneys; Mr. Greilsheimer, Wilfred P. Coronato, and Daniel H. Weiner (Hughes Hubbard & Reed LLP) of the New York bar, admitted pro hac vice, on the brief).

PER CURIAM

Plaintiff Pop Test Cortisol, LLC (Pop Test), appeals the Chancery Division's May 2, 2013 order compelling arbitration of its claims against defendants Merck & Co., Inc. (Merck), Merck Sharp Dohme (MSD), and N.V. Organon (Organon), which is now known as Merck Sharp Dohme B.V. (MSD B.V.), collectively referred to as the Merck defendants.[1] Pop Test also appeals the June 7, 2013 order denying its motion for reconsideration.[2] We affirm.

I.

We discern the following facts and procedural history from the record on appeal.

Pop Test develops medical diagnostic products, including those related to detection and measurement of cortisol, which is

[1] MSD B.V. is a wholly-owned subsidiary of MSD, which is a wholly-owned subsidiary of Merck.

[2] Pop Test also appeals a third order, entered on June 10, 2013, based on the removal of the case to federal court by the non-Merck defendants. That appeal is moot because the case has been remanded to the Superior Court.

a steroid hormone produced by the adrenal cortex. Prior to its acquisition by Merck, Organon was a Netherlands-based company. It created and obtained patents related to a compound known as ORG 34517 (licensed compound), a cortisol-blocking drug designed for use in human health.

On December 7, 2010, Pop Test and Organon entered into a thirty-five page agreement that granted Pop Test a license to develop and commercialize ORG 34517 (license agreement). As consideration for granting the license, Organon was to receive a payment of $500,000. Although technically due on signing, the agreement provided that Pop Test could have one year thereafter to make the payment and that it was to use "reasonable best efforts" to make it by December 31, 2010. The agreement contained provisions for additional payments contingent on Pop Test reaching certain "milestones" in its effort to develop and sell human pharmaceutical products containing the licensed compound. Finally, it required the payment of royalties once Pop Test began selling such products.

The agreement contains a specific provision governing dispute resolution. Section 13.2 of the agreement provides:

> All disputes arising out of or relating to this Agreement, or the rights or obligations of the Parties hereunder, or relating in any way to the relationship between the Parties with respect to the Licensed Compound or Licensed Product, shall

> be finally and exclusively settled by arbitration by a panel of three (3) arbitrators.

Pursuant to Section 13.2(a), all arbitrations are to be conducted under the Commercial Arbitration Rules of the American Arbitration Association.

Following the execution of the agreement, disputes arose between Pop Test and the Merck defendants. Pop Test alleged that Organon and the other defendants breached their contractual obligations, including failure to "transition" the licensed compound to Pop Test, refusal to provide it with the stock of the licensed compound, and the surreptitious transfer of proprietary matter covered by the agreement to the University of Chicago. At the same time, Merck was pressing Pop Test for payment of the overdue $500,000 initial payment.

On March 6, 2013, Pop Test filed a sixteen-count complaint against the Merck defendants, as well as C. Rik Broekkamp, an intellectual-property attorney residing in the Netherlands, Bernard Peeters, a scientist who had been employed by Organon, and Chardon Pharma, which the complaint described, "on information and belief," as "a Netherlands entity comprised of Defendants Broekkamp and Peeters as a 'jural' alter ego and mechanism." The complaint alleged that the Merck defendants breached their obligations under the agreement because they

determined that "they may have made a huge and historic mistake" in licensing the compound and thereafter engaged in "a nefarious plot . . . to re-obtain ORG[]34517, not by purchase, not by negotiation, but by causing the failure and demise of [Pop Test]."[3]

Pop Test sought an order to show cause (OTSC) with temporary restraints on March 13, 2013. The Chancery judge denied the requested restraints and set April 12, 2013, as the return date of the OTSC. The Merck defendants subsequently filed a cross-motion to compel arbitration, returnable on the same date. After hearing oral argument on the return date of the OTSC, the judge declined to enter a preliminary injunction. He allowed Pop Test additional time to supplement its papers on the issue of arbitration and adjourned the motion to compel arbitration.

On April 22, Pop Test filed its first amended complaint, adding causes of action under New Jersey's version of the federal RICO statute,[4] N.J.S.A. 2C:41-1 to -6.2, and for "torts of outrage/crimes."

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[3] The initial complaint pled various causes of action that are discussed later in our opinion.

[4] Although primarily a criminal statute, N.J.S.A. 2C:41-4(c) authorizes private suits by persons or entities damaged by activity prohibited under N.J.S.A. 2C:41-2.

The matter was heard again on May 2, at which time the judge reserved decision.[5] The same day, the judge issued an order accompanied by a statement of reasons. He concluded that Pop Test was bound by the arbitration provision to arbitrate all claims against the Merck defendants in the first amended complaint. Consequently, he dismissed the complaint as it related to the Merck defendants, subject to Pop Test's right to commence an arbitration action pursuant to the agreement.

On May 9, relying on the termination for cause provision of Section 12.3, Merck terminated the license agreement, citing Pop Test's failure to make the required payment. Under Section 12.6, the arbitration requirement "survive[d] the expiration or termination" of the agreement.

Pop Test filed a motion for reconsideration on May 13. The judge heard oral argument on June 7 and reserved decision. He issued an order and statement of reasons later the same day. Although he carefully reconsidered the issues raised in Pop

[5] By May 2, all three additional defendants were represented by counsel. None of them were parties to the arbitration agreement. Counsel for Broekkamp advised the judge that his client intended to move for dismissal based on lack of personal jurisdiction and that the client would not voluntarily participate in arbitration. Counsel for Peeters and Chardon advised the judge that he would be moving for dismissal on the basis that his clients were not parties to the licensing agreement, which he characterized as the basis for the complaint.

Test's motion, he declined to change the result he reached earlier. This appeal followed.

On June 3, Peeters and Chardon removed the action to the United States District Court of the District of New Jersey, alleging diversity jurisdiction. Following the removal, Pop Test attempted to file a second amended complaint, adding additional parties and claims, including claims under federal law. In an opinion and order dated December 23, 2013, the District Court remanded the case to the Superior Court, having determined that there was no diversity jurisdiction. In doing so, the district judge noted that the purported second amended complaint had not been accepted for filing because Pop Test failed to comply with federal procedural requirements.[6]

II.

On appeal, Pop Test argues that the motion judge erred in determining that the arbitration provision covered all of the claims pled against the Merck defendants. Pop Test further argues that, as a matter of public policy, the judge should have ordered that all claims against all parties be litigated in order to avoid fragmentation of Pop Test's overall claims.

[6] It is our understanding that Pop Test has filed one or more amended complaints in the Chancery Division since the remand.

A.

Before turning to the specific issues raised by Pop Test, we outline the general legal principles that govern our disposition of this appeal.

Orders compelling or denying arbitration are deemed final and appealable as of right as of the date entered. R. 2:2-3(a); GMAC v. Pittella, 205 N.J. 572, 587 (2011). We review a judge's decision to compel or deny arbitration de novo. Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013).

New Jersey statutory and case law echo their federal counterparts in exhibiting a "strong preference to enforce arbitration agreements." Id. at 186-87. In fact, arbitration is recognized as a "favored method for resolving disputes." Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131 (2001). To that end, agreements relating to arbitration should "be read liberally to find arbitrability if reasonably possible." Jansen v. Salomon Smith Barney, Inc., 342 N.J. Super. 254, 257 (App. Div.), certif. denied, 170 N.J. 205 (2001).

However, "the preference for arbitration is not without limits." Hirsch, supra, 215 N.J. at 187 (citation and internal quotation marks omitted). "A court must first apply state contract-law principles . . . [to determine] whether a valid

agreement to arbitrate exists." Ibid. (alteration in original) (citation and internal quotation marks omitted). This first question "underscores the fundamental principle that a party must agree to submit to arbitration." Ibid.

If a court finds a valid arbitration clause, it must then "evaluate whether the particular claims at issue fall within the clause's scope." Id. at 188. This involves an examination of "the language of the arbitration clause to establish its boundaries." Ibid. In this regard, "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute," the matter is arbitrable. Waskevich v. Herold Law, P.A., 431 N.J. Super. 293, 298 (App. Div. 2013) (citation and internal quotation marks omitted). Regarding the scope of arbitration disputes, "[c]ourts have generally read the terms 'arising out of' or 'relating to' [in] a contract as indicative of an 'extremely broad' agreement to arbitrate any dispute relating in any way to the contract." Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515, 518 (App. Div. 2010) (quoting Angrisani v. Fin. Tech. Ventures, L.P., 402 N.J. Super. 138, 149 (App. Div. 2008)).

B.

Pop Test does not claim that the arbitration provision is invalid or unenforceable per se. The focus of its appellate argument is that (1) at least some of its claims against the Merck defendants are not covered by the scope of the provision and (2) that, in any event, reasons of public policy nevertheless require that the entire litigation, all claims against all parties whether covered by the arbitration clause or not, be litigated in the courts rather that fragmented in different forums.

i.

Section 13.2 requires arbitration of "[a]ll disputes arising out of or relating to" the license agreement and the rights of the parties to the agreement, as well as disputes "relating in any way" to the relationship between the parties to the agreement and the licensed compound and human pharmaceutical products containing that compound. The quoted terms are among those we have held to be "indicative" of an intent to provide an "extremely broad" scope for the requirement to arbitrate. Griffin, supra, 411 N.J. Super. at 518 (citation and internal quotation marks omitted). Indeed, the scope of the provision is not limited to disputes concerning the parties' rights under the

licensing agreement itself, but also includes disputes between them involving the compound and products derived from it.[7]

The first amended complaint[8] contains eighteen counts, which present a wide variety of claims and theories of liability.[9] They generally sound in contract, tort, fraud, and breach of trust. In addition, there are statutory claims that provide enhanced damages for conduct that is also the basis of the common law claims. Nevertheless, the core of each claim, as demonstrated below, relates to the licensing agreement itself or

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[7] Pop Test's reliance on Fuller v. Guthrie, 565 F.2d 259 (2d Cir. 1977) is misplaced. In that case, singer Arlo Guthrie was precluded from invoking the arbitration clause of his contract with a concert promoter whom he purportedly slandered onstage. His conduct was found to be beyond the scope of the relatively narrow arbitration clause at issue, which required arbitration of "every claim, dispute, controversy, or difference involving the musical services arising out of or connected with the contract." Id. at 260 (emphasis added) (internal quotation marks omitted). The court concluded that the agreement was "intended to cover disputes arising from the character of Guthrie's performance and his payment for it," not "wholly unexpected tortious behavior." Id. at 261.

[8] The latest complaint before the motion judge was the first amended complaint. Any subsequent amended complaints were filed after the claims against the Merck defendants were dismissed and after Pop Test filed its notice of appeal. Consequently, they are not appropriately before us.

[9] Because we are not reviewing a dismissal for failure to state a claim upon which relief can be granted, we need not consider whether each of the eighteen counts actually states a valid claim.

the actions of the parties in relationship to the licensed compound and resulting products.

The first count is for "declaratory action/specific performance." It explicitly refers to breaches of the license agreement and requests specific performance of the agreement. The second count is for breach of contract, i.e., the agreement. The third count is based on "good faith and fair dealing/estoppel." Pop Test asserts that the Merck defendants "owed [Pop Test] a legal responsibility in connection with their involvement in these transactions." The fourth count is for "breach of trust & fiduciary obligations." It asserts that the Merck defendants "had a . . . performance obligation" and "were in a position of trust with respect to [Pop Test] . . . as venture parties to the executory contract." It also recites that the parties had a "special relationship created by the agreement."

The fifth count makes a claim of fraud under the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -195. The subject of the CFA claim is the "labor, supplies and services, which are involved in the purchase and operation of the contract assets and business." The sixth count is for conspiracy.[10] It recites

[10] The basis of a civil conspiracy is "not the unlawful agreement [among the conspirators], 'but the underlying wrong which, (continued)

that "[the Merck defendants] did unlawfully conspire to defeat the legal rights of" Pop Test, which rights are derived from the license agreement. It further states that, by reason of the conspiracy, Pop Test "has been precluded and defrauded of its just and lawful interest and benefit" from the agreement.

The seventh count is for tortious interference. It alleges that the Merck defendants "tortiously interfered with [Pop Test's] contract." The eighth count is for fraud. It accuses respondents and the non-Merck defendants of entering into a "violative . . . relationship and agreement" with a purpose to "defeat[]" and "foreclose[]" Pop Test's "rights in the contract." The alleged actions were "inten[ded] to defraud [Pop Test] and wrongfully strip it of its Contract rights." The ninth count is for "constructive/equitable fraud." It alleges that respondents' "conduct with respect to this matter . . . constituted . . . fraud." "This matter" refers to the rights, obligations, and relationships between and among the parties that were created by the license agreement. The tenth count is for "conversion/embezzlement." It explicitly states that respondents "wrongful[ly] and illegal[ly] . . . assumed . . .

(continued)
absent the conspiracy, would give a right of action.'" Morgan v. Union Cnty. Bd. of Chosen Freeholders, 268 N.J. Super. 337, 364 (App. Div. 1993), certif. denied, 135 N.J. 468 (1994).

the rights of ownership over property, chattels, goods, etc. of [Pop Test] referenced in the Contract . . . and related thereto."

The eleventh count is for negligence. It alleges that respondents "negligently entered and administered the Contract and the arrangements and agreements with regard to the project." The twelfth count is for "economic duress/extortion." It asserts that Pop Test "was the owner of product, rights, technology, and intellectual property by reason of the contract," and that the Merck defendants "wrongfully applied patent and latent pressure to oppress [Pop Test] and deprive it of the fruits and benefits of its Contract."

The thirteenth count is for "recoupment/set-off." It concludes that Pop Test "may equitably and legally avoid its . . . performance[] under the contract" by reason of the Merck defendants' "outrageous failures of performance and their sabotage(s) of the contract." The fourteenth count is titled "commercially unreasonable." It alleges that the Merck defendants "failed to act in a commercially reasonable manner . . . and as a result thereof breached their obligations to" Pop Test. The referenced obligations derive from the license agreement.

Count fifteen is titled "common morality." The claim states that Merck defendants' "actions were both injurious to and transgressive of accepted common morality or law." The sixteenth count is labeled "control party liability." It alleges that the Merck defendants "breached their duties" to Pop Test "by failing to assure that its operatives honored their managerial and trust obligations to" Pop Test. Those "managerial and trust obligations" derive from the license agreement, which describes and governs the relationship, rights, and obligations between and among the parties.

Count seventeen claims violations of New Jersey's RICO statute. The underlying wrongful acts relate to the Merck defendants' alleged misconduct in relationship to the licensed compound, including conspiracy to provide it to third parties, "[u]nlawful [s]hopping" of Pop Test's technology related to the compound, the filing of false studies concerning the compound with the FDA, and the formation of Chardon Pharma to "assist and accomplish said illegal results." All such acts were allegedly taken with "purpose . . . to steal/convert/take [Pop Test]'s interest" in the licensed compound, an interest that is conferred by and based on the license agreement.

Finally, count eighteen alleges "torts of outrage/crimes." It asserts that the Merck defendants "illegally 'collaborated'

with the University of Chicago as to [Pop Test's] ORG[]34517 property [and] shipped [Pop Test]'s proprietary compound without [Pop Test's] knowledge or permission." It also claims that respondents "illegally published and filed a false . . . study . . . with the FDA . . . to cause [Pop Test] to fail and lose its interest" in the licensed compound.

All of the claims alleged against the Merck defendants by Pop Test are, by their own terms, related to the licensing agreement itself or the actions of the parties in relationship to the licensed compound and resulting products. Pop Test nevertheless argues that some of its claims are not susceptible to arbitration. Most claims that purportedly fall into that category are not before us because they are contained in amended complaints filed after the Merck defendants had been dismissed from the underlying litigation and the appeal had been filed. With respect to those that are before us, Pop Test's argument focuses on claims sounding in criminality, such as RICO, fraud, and conspiracy.

In Caruso v. Ravenswood Developers, Inc., 337 N.J. Super. 499, 501 (App. Div. 2001), we upheld a trial judge's decision to

require arbitration involving the CFA and RICO violations.[11] We explained that, in determining arbitrability,

> the focus remains on the facts underlying the claim rather than the actual legal terms in which the claim is couched. . . . [W]hether a particular claim is arbitrable depends not upon the characterization of the claim, but upon the relationship of the claim to the subject matter of the arbitration clause. To hold otherwise would permit a party to frame its complaint in language which frustrates or avoids the scope of the arbitration clause.
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> [Id. at 507 (emphasis added) (citations and internal quotation marks omitted).]

Governed by this standard, we found that

> the consumer fraud and RICO claims are founded on facts no different than the breach of contract claims [previously] submitted to the arbitrator. An examination of the facts recited in the original complaint, which was eventually submitted to the arbitrator in 1997, reveals that plaintiffs rely on the same facts to support the breach of contract, consumer fraud and RICO claims. Although plaintiffs couch the claims in the relevant statutory language, it is apparent that the claims are subsumed in the subject matter of the arbitration agreement between the parties.

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[11] See also Shearson/Am. Exp., Inc. v. McMahon, 482 U.S. 220, 241-43, 107 S. Ct. 2332, 2345-46, 96 L. Ed. 2d 185, 203-04 (1987) (addressing federal RICO); Gras v. Assocs. First Capital Corp., 346 N.J. Super. 42, 52-54 (App. Div. 2001), certif. denied, 171 N.J. 445 (2002) (addressing the CFA).

Similarly, in EPIX Holding Corp. v. Marsh & McLennan Cos., 410 N.J. Super. 453, 468 (App. Div. 2009), overruled in part on other grounds, Hirsch, supra, 215 N.J. at 193, we found an insured's statutory antitrust price-fixing claims against a workers' compensation insurer and its parent company to be arbitrable because it was inextricably intertwined with the contract between the parties.

> The central factual allegation here is that defendants participated in a bid rigging scheme "with the sole purpose of enhancing their respective pecuniary interests," resulting in oppressive terms and inflated premiums charged for the workers' compensation program provided by the AIG defendants, to the detriment of plaintiff, who suffered damages and financial instability therefrom. In our view, the claims the AIG defendants seek to arbitrate not only "arise out of[,"] but are undeniably intertwined with the contract between EPIX and National Union, since it is the fact of EPIX's entry into the contract containing the allegedly inflated price and other oppressive terms that gives rise to the claimed injury.
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> [Id. at 474.]

We see nothing in the CFA or Rico statutes to suggest a legislative intent that claims made under either be exempt from arbitration. Id. at 475; but see Garfinkel, supra, 168 N.J. at 131 (finding to the contrary with respect to LAD[12] claims). In

[12] N.J.S.A. 10:5-1 to -49.

addition, we find no public policy against arbitration of claims involving allegations of fraud, conspiracy, conversion, or any of the other characterizations used in the first amended complaint.

There are no claims in this case remotely similar to those in Jones v. Halliburton Co., 583 F.3d 228, 235-39 (5th Cir. 2009), cert. dismissed 559 U.S. 998, 130 S. Ct. 1756, 176 L. Ed. 224 (2010), upon which Pop Test relies. That case involved the arbitrability of a claim arising from an alleged sexual assault against an off-duty employee of Halliburton. In reaching its decision, the Fifth Circuit relied on the rubric, cited above, that, "[w]hen deciding whether a claim falls within the scope of an arbitration agreement, courts 'focus on factual allegations in the complaint rather than the legal causes of action asserted.'" Id. at 240 (quoting Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V., 372 F.3d 339, 344 (5th Cir. 2004). The sexual assault at issue in Halliburton was not related to the underlying contract. Id. at 241.

Based upon our review of the applicable law, the nature of the arbitration agreement, and the factual allegations of the complaint, rather than the characterization of the causes of action asserted, we conclude that the Chancery judge correctly determined that all of Pop Test's claims against the Merck

defendants are within the scope of the arbitration provision and arbitration is not excluded for statutory or public policy reasons. However characterized, we are convinced that the claims pled against the Merck defendants are, at their core, a commercial dispute arising from the license agreement or the relationship between the parties and the compound and products derived from the compound. It certainly cannot be "said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute[s]." Waskevich, supra, 431 N.J. Super. at 298 (citation and internal quotation marks omitted).

ii.

We now briefly turn to Pop Test's argument that, even if all of its claims against the Merck defendants are subject to arbitration, they should not be determined separately from Pop Test's related claims against the non-Merck defendants. We find no merit to that argument.

New Jersey courts have been sympathetic to the notion that piecemeal litigation should be avoided and that all issues should be tried together rather than fragmented. Garfinkel, supra, 168 N.J. at 137. Nevertheless, as we pointed out in Waskevich, the Garfinkel Court was not called upon to consider

the requirements of the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1-3.[13] Waskevich, supra, 431 N.J. Super. at 299-300.

> Pursuant to the FAA, "federal law 'requires piecemeal resolution when necessary to give effect to an arbitration agreement.'" EPIX, supra, 410 N.J. Super. at 479 (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20, 103 S. Ct. 927, 939, 74 L. Ed. 2d 765, 782 (1983)). In EPIX, we determined that bifurcation was required even though certain parties to the litigation were not parties to the arbitration agreement and thus the plaintiff would have to litigate in two forums. Id. at 479-80.
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> Although the trial judge not unreasonably determined that the arbitrable issues should remain in court in part to avoid increased counsel fees, we are bound by the FAA as interpreted by the United States Supreme Court. The United States Supreme Court has interpreted the FAA to require that in these circumstances the State court must bifurcate the issues. KPMG LLP v. Cocchi, 565 U.S. ___, ___, 132 S. Ct. 23, 24, 181 L. Ed. 2d 323, 325 (2011). The Court stated that the FAA requires, "that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation." Ibid. (citing Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 217, 105 S. Ct. 1238, 1240-41, 84 L. Ed. 2d 158, 163 (1985)).
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> [Id. at 300.]

[13] The license agreement clearly implicates interstate commerce and, consequently, is governed by the FAA. 9 U.S.C.A. § 2.

See also EPIX, supra, 410 N.J. Super. at 479-80. The FAA requires the result reached by the motion judge.

We have reviewed Pop Test's remaining arguments on this issue and find them to be without sufficient merit to warrant an extended discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

Pop Test's reliance on its earlier secrecy agreement with Schering Corporation (Schering) concerning the licensed compound is misplaced. That agreement, which designated the courts of New Jersey as the forum for dispute resolution, was signed in August 2009. It imposed confidentiality obligations on Pop Test, but not Schering. In any event, Merck acquired Schering later that year. Pursuant to Section 14.6 of the license agreement, the licensing agreement "supersede[d] and terminate[d] all prior agreements and understandings between the Parties" concerning the compound and resulting products. As a result, the secrecy agreement is simply inapplicable to this case.

Equally misplaced is Pop Test's reliance on an agreement between Pop Test and Peeters and Chardon, under which the latter two were to perform work concerning the compound at Pop Test's request. It too called for dispute resolution in a judicial forum in New Jersey, either state or federal. The dispute

resolution provision in that agreement does not govern the disputes between Pop Test and the Merck defendants, which are the only ones at issue here.

III.

For the reasons outlined above, we conclude that Judge Robert P. Contillo correctly determined that all of Pop Test's claims against the Merck defendants are subject to arbitration pursuant to Section 13.2 of the license agreement. We also determine that he did not err in ordering their arbitration despite the fact that there are additional claims against other defendants requiring adjudication in the Superior Court. Consequently, we affirm the May 2, 2013 order. Because we find no error in the judge's initial decision, we also affirm the June 7, 2013 order declining to change the result after reconsideration.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION