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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

17 EVOLUTION MALTA LIMITED,  
EVOLUTION GAMING MALTA  
18 LIMITED, EVOLUTION GAMING  
LIMITED and SIA EVOLUTION LATVIA,  
19

Plaintiffs,

20 vs.

21 LIGHT & WONDER, INC. f/k/a  
22 SCIENTIFIC GAMES CORP. and LNW  
23 GAMING, INC. f/k/a SG GAMING, INC.,

24 Defendants.  
25  
26  
27  
28

CASE NO.: 2:24-cv-00993-CDS-EJY

**DEFENDANTS' MOTION TO COMPEL  
ARBITRATION**

TABLE OF CONTENTS

	<b>Page</b>
1 I. INTRODUCTION .....	1
2 II. BACKGROUND .....	1
3 III. EVOLUTION’S TRADE SECRET CLAIMS ARE SUBJECT TO	
4 ARBITRATION .....	2
5 A. Arbitrability of the Trade Secret Claims Should Be Decided by an	
6 Arbitrator.....	2
7 B. Alternatively, Evolution’s Trade Secret Claims Are Arbitrable and Must	
8 Be Stayed and Referred to Arbitration.....	4
9 IV. ALTERNATIVELY, THE TRADE SECRET CLAIMS ARE TIME-BARRED .....	7
10 V. CONCLUSION.....	9

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**TABLE OF AUTHORITIES**

	<b>Page</b>
<b>CASES</b>	
<i>AT&amp;T Techs., Inc. v. Commc’n Workers</i> , 475 U.S. 643 (1986).....	5
<i>Clark Cnty. Pub. Emps. Ass’n v. Pearson</i> , 798 P.2d 136 (Nev. 1990).....	5, 6
<i>First Options of Chi., Inc. v. Kaplan</i> , 514 U.S. 938 (1995).....	2
<i>Han v. Mobil Oil Corp.</i> , 73 F.3d 872 (9th Cir. 1995) .....	7, 8
<i>Hatkoff v. Portland Adventist Med. Ctr.</i> , 287 P.3d 1113 (Or. App. Ct. 2012).....	8
<i>Henry Schein, Inc. v. Archer &amp; White Sales, Inc.</i> , 586 U.S. 63 (2019).....	3, 4
<i>Holcomb Condo. Homeowners’ Ass’n, Inc. v. Stewart Venture, LLC</i> , 300 P.3d 124 (Nev. 2013).....	7, 8
<i>In re Packaged Seafood Prods. Antitr. Litig.</i> , 242 F. Supp. 3d 1033 (S.D. Cal. 2017).....	8
<i>Int’l Ass’n of Firefighters, Loc. 1285 v. City of Las Vegas</i> , 764 P.2d 478 (Nev. 1988).....	6
<i>Int’l Ass’n of Firefighters, Loc. 1285 v. City of Las Vegas</i> , 929 P.2d 954 (Nev. 1996).....	5
<i>Knievel v. ESPN</i> , 393 F.3d. 1068 (9th Cir. 2005) .....	1
<i>Petersen v. Bruen</i> , 792 P.2d 18 (Nev. Sup. Ct. 1990).....	8
<i>Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.</i> , 862 F.3d 981 (9th Cir. 2017) .....	3, 4

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page</b>
1 <i>Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.</i> ,	
2 No. 16-cv-00495, 2016 WL 4059658 (D. Or. July 27, 2016).....	4
3 <i>RUAG Ammotec GmbH v. Archon Firearms, Inc.</i> ,	
4 538 P.3d 428 (Nev. 2023).....	3, 4
5 <i>Seagate Tech. LLC v. Dalian China Express Int’l Corp.</i> ,	
6 169 F. Supp. 2d 1146 (N.D. Cal. 2001).....	8
7 <i>SR Constr., Inc. v. Peek Bros. Constr., Inc.</i> ,	
8 510 P.3d 794 (Nev. 2022).....	4, 5
9 <i>Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.</i> ,	
10 559 U.S. 662 (2010).....	4
11 <i>Uber Techs., Inc. v. Royz</i> ,	
12 517 P.3d 905 (Nev. 2022).....	4
13 <i>United States ex rel. Welch v. My Left Foot Children’s Therapy, LLC</i> ,	
14 871 F.3d 791 (9th Cir. 2017).....	8
15 <b>STATUTES</b>	
16 Defend Trade Secrets Act of 2016, Pub. L. 114-153, 130 Stat. 376.....	1
17 Nevada Trade Secrets Uniform Act, Nev. Rev. Stat. § 660A.....	1
18 <b>RULES</b>	
19 Fed. R. Civ. P. 12(b)(6).....	9
20 Rules of Arb. of Int’l Chamber of Com., Article 6(3).....	3
21	
22	
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1 **I. INTRODUCTION**

2 Plaintiff Evolution accuses Light & Wonder (“L&W”) of infringing three patents (“Patent  
 3 Claims”) and misappropriating trade secrets under the Defend Trade Secrets Act and Nevada Trade  
 4 Secrets Uniform Act (“Trade Secret Claims”). ECF No. 1. Evolution’s Patent Claims are the  
 5 subject of a Motion to Dismiss. ECF No. 34, *see also* ECF No. 72. Pursuant to the Court’s recent  
 6 Notice Regarding Defendants’ Motion to Dismiss (ECF No. 72), L&W hereby refiles its motion  
 7 to stay and compel arbitration of the Trade Secret Claims (Counts IV and V) because they are  
 8 subject to the parties’ arbitration agreement; or, alternatively, dismiss the Trade Secret Claims  
 9 because they are each time-barred under the parties’ agreement.

10 **II. BACKGROUND**

11 This case involves Evolution’s allegations regarding its alleged intellectual property  
 12 relating to the century-old game of roulette. Evolution is a provider of online casino games  
 13 including, an on-line live version of roulette called Lightning Roulette. ECF No. 1, ¶¶ 2, 4. L&W  
 14 is a leading cross-platform global games company with a focus on content and digital markets  
 15 headquartered in Las Vegas, Nevada. L&W is supplier of game content and gaming machines, as  
 16 well as table game products and services for licensed gaming entities.

17 On March 29, 2021, Evolution and L&W entered into a Lightning Roulette License  
 18 Agreement (“License Agreement”) providing L&W an exclusive license to the Asserted Patents  
 19 so that L&W could develop and manufacture a physical Lightning Roulette game table. *See id.*  
 20 ¶ 19; *see also* License Agreement (ECF No. 34, Ex. 1, at D) (hereinafter “Ex. 1”). *See Knievel v.*  
 21 *ESPN*, 393 F.3d. 1068, 1076 (9th Cir. 2005) (“[T]he ‘incorporation by reference’ doctrine, . . .  
 22 permits us to take into account documents ‘whose contents are alleged in a complaint . . . , but  
 23 which are not physically attached to the [plaintiff’s] pleading.’”) (citation omitted). The License  
 24 Agreement also provided L&W’s obligations with respect to the “math files.” ECF No. 1 ¶ 20.  
 25 The parties agreed in the License Agreement to resolve “[a]ny claim . . . which arises out of or in  
 26 connection with this Agreement, . . . under the Rules of Arbitration of the International Chamber  
 27 of Commerce [(“ICC”).]” Ex. 1 § 15(c).

28

1 Evolution identifies as its alleged trade secrets the Lightning Roulette math files. ECF No.  
 2 1 ¶¶ 28, 120, 135. Evolution alleges that its math files lay out the math for “the frequency with  
 3 which each multiplier is selected, the frequency with which the roulette numbers are selected as  
 4 ‘Lucky Numbers,’ and the frequency with which the ball lands on a roulette number” which,  
 5 according to Evolution, allow its Lightning Roulette game to remain profitable. *Id.* ¶¶ 17, 122.

### 6 **III. EVOLUTION’S TRADE SECRET CLAIMS ARE SUBJECT TO ARBITRATION**

7 Evolution and L&W contractually agreed in their License Agreement to limit both the  
 8 forum and timeframe in which disputes related to the agreement would be resolved. Specifically,  
 9 they agreed to resolve “[a]ny claim . . . which arises out of or in connection with this Agreement  
 10 . . . under the Rules of Arbitration of the [ICC].” Ex. 1 § 15(c). Further, they agreed “they shall  
 11 bring any claim arising under or relating to this Agreement within twelve (12) Months from the  
 12 date of the claim arising” and that “failure to do so shall result in any such claim automatically and  
 13 irrevocably expiring.” *Id.* § 8(g).

14 Given these two binding contractual provisions, there are only three potential paths forward  
 15 for the Trade Secret Claims. *First*, because the parties expressly incorporated into their arbitration  
 16 agreement the ICC’s Rules—which expressly delegate questions regarding the arbitrability of  
 17 claims to the arbitrator—the Court must stay Evolution’s Trade Secret Claims and compel the  
 18 parties to arbitrate any dispute regarding the arbitrability of the Trade Secret Claims in accordance  
 19 with the ICC’s Rules. *Second*, alternatively, if the Court concludes that it has the authority to  
 20 determine arbitrability, the Court should find that Evolution’s Trade Secret Claims fall under the  
 21 parties’ arbitration agreement, stay those claims, and compel arbitration. And *third*, alternatively,  
 22 if the Court concludes that it has jurisdiction over the Trade Secret Claims, it should find that those  
 23 claims are time-barred under the parties’ bargained-for one-year limitations period.

#### 24 **A. Arbitrability of the Trade Secret Claims Should Be Decided by an Arbitrator**

25 “Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed  
 26 to arbitrate that dispute, so the question who has the primary power to decide arbitrability turns  
 27 upon what the parties agreed about *that* matter.” *First Options of Chi., Inc. v. Kaplan*, 514 U.S.  
 28 938, 943 (1995). “Just as a court may not decide a merits question that the parties have delegated

1 to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to  
 2 an arbitrator.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019). In  
 3 keeping with that principle, the United States and Nevada Supreme Courts have held that where  
 4 the parties have delegated arbitrability questions to an arbitrator, a court is bound to refer such  
 5 questions to the arbitrator regardless of the Court’s views on the merits of the question: “When the  
 6 parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the  
 7 contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That  
 8 is true even if the court thinks that the argument that the arbitration agreement applies to a  
 9 particular dispute is wholly groundless.” *Id.* at 68; *accord RUAG Ammotec GmbH v. Archon*  
 10 *Firearms, Inc.*, 538 P.3d 428, 433 (Nev. 2023) (“Where threshold questions of arbitrability are  
 11 delegated to an arbitrator, a court possesses no power to decide the arbitrability issue.”) (internal  
 12 quotation marks omitted).

13 Here, the parties have clearly and unmistakably delegated questions of arbitrability to the  
 14 arbitrator. As explained above, the parties’ arbitration agreement provides that “[a]ny claim . . .  
 15 which arises out of or in connection with this Agreement” would be “finally settled . . . under the  
 16 Rules of Arbitration of the [ICC].” Ex. 1 § 15(c). In turn, Article 6(3) of the ICC’s Rules provides:

17 [I]f any party raises one or more pleas concerning the existence, validity or scope  
 18 of the arbitration agreement or concerning whether all of the claims made in the  
 19 arbitration may be determined together in a single arbitration, the arbitration shall  
 20 proceed and any question of jurisdiction . . . shall be decided directly by the arbitral  
 21 tribunal.

22 The Ninth Circuit and Nevada Supreme Court have explicitly held that “the incorporation  
 23 of the rules of the ICC into an arbitration agreement . . . constitutes clear and unmistakable  
 24 evidence of a delegation of gateway issues to the arbitrator.” *Portland Gen. Elec. Co. v. Liberty*  
 25 *Mut. Ins. Co.*, 862 F.3d 981, 985 (9th Cir. 2017); *RUAG*, 538 P.3d at 433 (following *Portland Gen.*  
 26 *Elec.* and holding “the incorporation of the ICC Rules is clear evidence that the parties delegated  
 27 questions of arbitrability to the arbitrator”).

28 Nor is there any question that the parties have adequately incorporated the ICC’s Rules  
 into their agreement. Ex. 1 § 15(c). Section 15(c) is materially indistinguishable from the

1 provision in *Portland Gen. Elec.* that the Ninth Circuit found sufficient to incorporate the ICC’s  
 2 Rules. *Portland Gen. Elec.*, 862 F.3d at 984, 985 (finding incorporation where the arbitration  
 3 agreement provided that “the arbitration is to be conducted by the International Chamber of  
 4 Commerce under its procedural rules”); *see Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, No.  
 5 16-cv-00495, 2016 WL 4059658, at \*2 (D. Or. July 27, 2016) (district court decision containing  
 6 the arbitration agreement language). And, the Nevada Supreme Court has found that nearly  
 7 identical language was sufficient to incorporate the American Arbitration Association’s Rules into  
 8 an arbitration agreement. *Uber Techs., Inc. v. Royz*, 517 P.3d 905, 910 (Nev. 2022).

9 By incorporating the ICC Rules into their arbitration agreement, the parties delegated all  
 10 arbitrability questions to the arbitrator. Accordingly, this Court has “no power to decide the  
 11 arbitrability issue” and is bound by United States and Nevada Supreme Court precedent to refer  
 12 arbitrability disputes to the arbitrator. *Henry Schein*, 586 U.S. at 68; *RUAG*, 538 P.3d at 433.

13 **B. Alternatively, Evolution’s Trade Secret Claims Are Arbitrable and Must Be**  
 14 **Stayed and Referred to Arbitration**

15 Even if the Court decides that the arbitrability question was not delegated to the arbitrator,  
 16 the Trade Secret Claims are arbitrable under the License Agreement, and the Court should refer  
 17 them to arbitration and stay them. “[T]he interpretation of an arbitration agreement is generally a  
 18 matter of state law.” *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 681 (2010). And  
 19 the arbitration agreement provides that “[t]his arbitration agreement shall be construed in  
 20 accordance with and governed by the laws of the State of Nevada.” Ex. 1 § 15(c).

21 To compel arbitration under Nevada law, L&W must establish that: (1) “there is an  
 22 enforceable agreement to arbitrate” and (2) “that the dispute fits within the scope of the arbitration  
 23 agreement.” *SR Constr., Inc. v. Peek Bros. Constr., Inc.*, 510 P.3d 794, 798 (Nev. 2022). Here,  
 24 there can be no dispute that there is an enforceable arbitration agreement between the parties. As  
 25 already discussed, in the License Agreement the parties agreed to resolve “[a]ny claim . . . which  
 26 arises out of or in connection with this Agreement” under the ICC Rules. Ex. 1 § 15(c).

27 In light of that agreement to arbitrate, the only question remaining is whether Evolution’s  
 28 Trade Secrets Claims are covered by that agreement. Nevada law recognizes “a strong

1 presumption in favor of arbitrating a dispute where a valid and enforceable arbitration agreement  
 2 exists between the parties.” *SR Constr., Inc.*, 510 P.3d at 798. And that presumption only grows  
 3 stronger where the arbitration agreement uses broad language, as is the case here: “Under a broad  
 4 arbitration provision—i.e., one that encompasses all disputes related to or arising out of an  
 5 agreement—a presumption of arbitrability applies and ‘*only the most forceful evidence of a*  
 6 *purpose to exclude the claim from arbitration* can prevail.’” *SR Constr, Inc.*, 510 P.3d at 798  
 7 (emphasis added) (quoting *Clark Cnty. Pub. Emps. Ass’n v. Pearson*, 798 P.2d 136, 138 (Nev.  
 8 1990)). In other words, the court “should order arbitration of particular grievances ‘unless it may  
 9 be said with positive assurance that the arbitration clause is not susceptible of an interpretation that  
 10 covers the asserted dispute.’” *Int’l Ass’n of Firefighters, Loc. 1285 v. City of Las Vegas*, 929 P.2d  
 11 954, 957 (Nev. 1996) (quoting *AT&T Techs., Inc. v. Commc’n Workers*, 475 U.S. 643, 650 (1986)).  
 12 In applying this standard, “Nevada courts resolve all doubts concerning the arbitrability of the  
 13 subject matter of a dispute in favor of arbitration.” *Id.*

14 Here, the Trade Secret Claims fall within the scope of the parties’ broad arbitration  
 15 agreement, particularly given the strong presumption in favor of arbitration. *Pearson*, 798 P.2d at  
 16 138. The Trade Secret Claims as pled clearly “aris[e] out of or [are] in connection with this  
 17 Agreement” (Ex. 1 § 15(c)), as Evolution itself alleges, “[t]he [License] Agreement reiterated  
 18 LNW Gaming’s obligations to maintain the confidentiality and proprietary information, which  
 19 includes the Lightning Roulette math files.” ECF No. 1 ¶ 20. The Court, therefore, must refer the  
 20 matter to arbitration unless it can say beyond doubt that the parties intended to exclude Trade  
 21 Secret Claims from arbitration.

22 The second paragraph of § 15(c) does include a carve out, stating that the arbitration  
 23 agreement shall “not in any way limit Licensor’s freedom to enforce its rights under this  
 24 Agreement . . . in relation to the Licensed Property.” *See* Ex. 1. Section 1 defines “Licensed  
 25 Property” as “including but not limited to the IP rights set out in Schedule 2, the trademark  
 26 ‘Lightning Roulette,’ the trade dress and copyrights in the table layout and appearance, Know-  
 27 How, and any Derivative Works to the IP rights created hereafter.” Nowhere are trade secrets  
 28 specifically defined as Licensed Property. *See id.*, “Definitions,” Sec. 1 at 3, and Sched. 2. And

1 the math files alleged here are not Licensed Property. Section 7(c) provides that: “[T]he disclosure  
2 of any confidential or proprietary information by one party to the other hereunder shall [not] be  
3 construed as granting to the recipient of such information, by implication or otherwise, any right  
4 in, or license to, any present or future proprietary information.” *Id.*, § 7(c) (emphasis added). A  
5 straight-forward reading of this language indicates that any disclosure of the math files by  
6 Evolution to L&W was not meant to create any actual license for L&W to use those math files. In  
7 other words, because there was no license for L&W to use the math files, they were never  
8 “Licensed Property” as that term is used in Sections 1 and 15(c) of the License Agreement,  
9 meaning that Evolution’s allegations in the Complaint regarding misappropriation of the math files  
10 falls outside the scope of the limited exception for claims “in relation to the Licensed Property”  
11 from the extremely broad arbitration clause in Section 15(c).

12 Tellingly, in its Complaint, Evolution only specifically identifies the Asserted Patents as  
13 “Licensed Property” under the License Agreement. *See* ECF No. 1 ¶ 19. Thus, to the extent that  
14 Evolution now argues that the alleged trade secrets were “Licensed Property,” Evolution’s  
15 argument would not be the only reasonable interpretation of the License Agreement’s language,  
16 particularly in light of the broader context of the agreement and its own allegations. In accord,  
17 reasonable minds could differ about whether the math files described in the Complaint fall under  
18 the definition of “Licensed Property” in Section 15(c). And, as the United States and Nevada  
19 Supreme Court have repeatedly held, that reasonable ambiguity is fatal to any argument Evolution  
20 could make about the Trade Secret Claims being exempted from the parties’ broad arbitration  
21 agreement: “[C]ourts should order arbitration of particular grievances ‘unless it may be said with  
22 *positive assurance* that the arbitration clause is not susceptible of *an* interpretation that covers the  
23 asserted dispute.’” *Pearson*, 798 P.2d at 138 (quoting *Int’l Ass’n of Firefighters, Loc. 1285 v. City*  
24 *of Las Vegas*, 764 P.2d 478, 481 (Nev. 1988).

25 Simply put, to avoid arbitration, Evolution must show that there is no reasonable reading  
26 of the License Agreement that would require their Trade Secret Claims to be arbitrated. But, as  
27 explained above, such a reasonable reading exists when the “Licensed Property” carve-out is read  
28 in the broader context of the License Agreement, including the fact that the License Agreement

1 did not “license” the math files to L&W at all. Nor does Evolution allege that it did. ECF No. 1  
 2 ¶ 19. Because Evolution cannot show that its reading of the contract is the only reasonable one,  
 3 the strong presumption in favor of arbitration requires this Court to submit Evolution’s Trade  
 4 Secret Claims to arbitration.

#### 5 **IV. ALTERNATIVELY, THE TRADE SECRET CLAIMS ARE TIME-BARRED**

6 Even if the Court concludes that it has jurisdiction to resolve Evolution’s Trade Secret  
 7 Claims, it should dismiss the Trade Secret Claims as time-barred under Section 8(g) of the License  
 8 Agreement.<sup>1</sup> That section unequivocally provides that the parties “shall bring any claim *arising*  
 9 *under or relating to this Agreement* within twelve (12) Months from the date of the claim arising”  
 10 and that “failure to do so shall result in any such claim automatically and irrevocably expiring.”  
 11 Ex. 1 § 8(g) (emphasis added). The Nevada Supreme Court has held that “a party may  
 12 contractually agree to a limitations period shorter than that provided by statute as long as . . . the  
 13 shortened period is reasonable, and subject to normal defenses including unconscionability and  
 14 violation of public policy.” *Holcomb Condo. Homeowners’ Ass’n, Inc. v. Stewart Venture, LLC*,  
 15 300 P.3d 124, 128 (Nev. 2013). Likewise, the Ninth Circuit has held that “contracting parties  
 16 [may] agree upon a shorter limitations period for bringing an action than that prescribed by statute,  
 17 so long as the time allowed is reasonable.” *Han v. Mobil Oil Corp.*, 73 F.3d 872, 877 (9th Cir.  
 18 1995).

19 Section 8(g)’s one-year limitations period is neither unreasonable nor unconscionable.  
 20 Evolution and L&W are sophisticated entities represented by counsel who engaged in extensive  
 21 negotiations prior to entering into the License Agreement. *See* ECF No. 1 at ¶¶ 2–3, 14, 16, 19.  
 22 Under similar circumstances, the Ninth Circuit has held that “[a] contractual limitation period  
 23 requiring a plaintiff to commence an action within 12 months following the event giving rise to a  
 24

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25 <sup>1</sup> Evolution’s claims regarding the ’014 and ’024 patents are also time-barred, and should be  
 26 dismissed. The ’371 Patent did not issue until September 12, 2023, which is within twelve months  
 27 of filing this lawsuit, and thus, is not subject to the time-bar. *See* ECF No. 1 ¶ 95. Regarding the  
 28 ’014 and ’024 patents, as alleged in the Complaint, “by letters dated *February 28, 2022* and April  
 24, 2024, Evolution . . . put L&W on notice that RouletteX infringes the ’024 patent [and ’014  
 patent].” ECF No. 1 at ¶¶ 61, 88 (emphasis added). Yet, Evolution did not sue until May 28,  
 2024, over two years later. L&W understands that, per ECF No. 72, the court is considering this  
 argument as part of L&W’s Motion to Dismiss the Patent Claims. If not, Evolution’s claims  
 regarding the ’014 and ’024 patents should be dismissed as time-barred.

1 claim is a reasonable limitation which generally manifests no undue advantage and no unfairness.”  
 2 *Han*, 73 F.3d at 877; accord *Seagate Tech. LLC v. Dalian China Express Int’l Corp.*, 169 F. Supp.  
 3 2d 1146, 1159 (N.D. Cal. 2001) (holding that a nine-month contractual limitations period was  
 4 reasonable and stating that “[w]ithout evidence that Seagate was somehow prejudiced by the nine-  
 5 month provision, in that it was unable to gather facts or present its case, the court will not find the  
 6 clause to be unreasonable.”). Nevada’s “unreasonableness” standard in this context is similarly  
 7 strict, requiring that “the reduced limitations period effectively deprives a party of the reasonable  
 8 opportunity to vindicate his or her rights.” *Holcomb*, 300 P.3d at 129 (quoting *Hatkoff v. Portland*  
 9 *Adventist Med. Ctr.*, 287 P.3d 1113, 1121 (Or. App. Ct. 2012). Because Evolution can make no  
 10 such showing here, Section 8(g)’s agreed-upon limitations period must be enforced.

11 Because Section 8(g) applies, Evolution’s Trade Secret Claims are time-barred. Under  
 12 Nevada law, a claim arises “when the wrong occurs and a party sustains injuries for which relief  
 13 could be sought.” *Petersen v. Bruen*, 792 P.2d 18, 20 (Nev. Sup. Ct. 1990). The federal rule is  
 14 similar, providing that the limitations period begins when “all the elements of such claim are  
 15 satisfied; i.e., until a plaintiff may validly sue under a particular cause of action.” *In re Packaged*  
 16 *Seafood Prods. Antitr. Litig.*, 242 F. Supp. 3d 1033, 1099 (S.D. Cal. 2017).

17 Applying these well-settled legal principles, Evolution’s Trade Secret Claims clearly arose  
 18 more than one year before it filed this lawsuit. As alleged in the Complaint, “Evolution first  
 19 discovered that L&W had misappropriated Evolution’s trade secrets when L&W unilaterally  
 20 sought to terminate the parties’ [License] Agreement *in August 2021*.” ECF No. 1 ¶ 142 (emphasis  
 21 added). Yet, Evolution did not sue until May 28, 2024, nearly three years later.

22 Further, Evolution’s allegations that L&W misappropriated trade secrets that were  
 23 disclosed to L&W pursuant to the License Agreement “aris[e] under or relat[e] to th[e]  
 24 Agreement.” Ex. 1 § 8(g), Sched. 2; *United States ex rel. Welch v. My Left Foot Children’s*  
 25 *Therapy, LLC*, 871 F.3d 791, 798 (9th Cir. 2017) (“[T]he phrases, ‘arising out of’ and ‘related to,’  
 26 mark a boundary by indicating some direct relationship.”). There is undeniably “some direct  
 27 relationship” between the License Agreement and the Trade Secret Claims. Indeed, based on the  
 28 allegations in the Complaint, there is a “direct relationship” between the License Agreement and

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L&W’s alleged misappropriation of the trade secrets. ECF No 1 ¶ 20 (“The Agreement reiterated LNW Gaming’s obligations to maintain the confidentiality of Evolution’s confidential and proprietary information, which includes the Lightning Roulette math files.”)

Accordingly, even if the Court finds that it has jurisdiction to hear Evolution’s Trade Secret Claims, the Court must nevertheless dismiss those claims as time-barred under Section 8(g)’s one-year limitations period. Ex. 1.

**V. CONCLUSION**

For the foregoing reasons, the Court should stay and compel arbitration of Evolution’s Trade Secret Claims (Counts IV and V) because they are subject to the parties’ binding arbitration agreement including on the arbitrability question. Alternatively, Counts IV and V should be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6), as they are each time-barred pursuant to the parties’ agreement.

DATED this 7th day of February, 2025.

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By: /s/ Philip R. Erwin

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of February, 2025, I caused a true and correct copy of the foregoing **Defendants’ Motion to Compel Arbitration** to be served via the United States District Court CM/ECF system on all parties or persons requiring notice.

/s/ Philip R. Erwin  
An employee of Campbell & Williams