IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN TWOMEY; WILLIAM CRIM; GREGORY ERNST; JASON GOODIN; and ADAM KLEEKAMP, individually and on behalf of all others similarly situated, Plaintiffs, v. ACE HARDWARE CORPORATION; ACE RETAIL HOLDINGS LLC; ACE RETAIL GROUP, INC.; EPICOR SOFTWARE CORPORATION; ACE HARDWARE OF CHATTANOOGA, INC.; BELLMORE HOME CENTER, INC. (d/b/a "COSTELLO'S ACE HARDWARE"); BOLSTER HARDWARE LLC; THE HELPFUL HARDWARE COMPANY, LLC; THE HELPFUL GROUP, LLC; NIEMANN FOODS, INC.; W.E. AUBUCHON CO., INC.; and WHITMORE INVESTMENTS, INC., Defendants.	Case No. 1:26-cv-05320 Honorable Sunil R. Harjani

ACE HARDWARE CORPORATION'S, ACE RETAIL HOLDINGS LLC'S, ACE RETAIL GROUP, INC.'S, AND ACE STORE DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND TO STAY

Defendants Ace Hardware Corporation, Ace Retail Holdings LLC, and Ace Retail Group, Inc. ("Ace"), and Defendants Ace Hardware of Chattanooga, Inc., Bellmore Home Center, Inc. (d/b/a Costello's Ace Hardware); Bolster Hardware LLC, The Helpful Hardware Company, LLC, The Helpful Group, LLC, Niemann Foods, Inc., W.E. Aubuchon Co., Inc., and Whitmore Investments, Inc. (the "Ace Store Defendants") respectfully move to compel arbitration and to stay this proceeding as to four of the five plaintiffs under the Federal Arbitration Act ("FAA"), 9 U.S.C.

§ 1 *et seq.* This memorandum supersedes Ace's August 3, 2026 memorandum (Dkt. 36) in light of the Amended Class Action Complaint (Dkt. 44).

Overview

Four of the five plaintiffs agreed to resolve their claims in individual arbitration. Each took part in the "Ace Rewards Program." The Ace Rewards Program Terms and Conditions ("Program Terms") require individual arbitration of "all claims" relating to Ace products. The Amended Complaint tries to plead around that agreement in two ways. It first labels plaintiffs Adam Kleekamp and Sean Twomey "not a member" of Ace Rewards. (Am. Compl. ¶¶ 18, 22.) But Ace's records show that both used the Rewards Program for their purchases. Plaintiffs William Crim and Gregory Ernst, for their part, admit membership, but they try to avoid the Program Terms by suing only the Ace Store Defendants and Epicor, not Ace Hardware Corporation. (*Id.* ¶¶ 19–20.) That tactical choice changes nothing. The arbitration agreement runs to Ace Hardware Corporation's "affiliates" (a term that is to be construed broadly) and the plaintiffs allege that the Ace Store Defendants "own and control" it. (*Id.* ¶¶ 8, 36.) Goodin's claims rest on the same alleged conspiracy and should be stayed with the rest.[1] The table below summarizes the basis for relief as to each plaintiff. In sum:

Plaintiff	Claims Brought Against	Basis for Compelling Arbitration
Adam Kleekamp	All Defendants (Am. Compl. ¶ 22)	Ace's records show that he is an Ace Rewards member, so he agreed to the Program Terms' arbitration clause. (Part I.A.1.)
Sean Twomey	All Defendants (Am. Compl. ¶ 18)	By using his wife's Ace Rewards account, he participated in the Program and is bound by its arbitration clause. (Part I.A.2.)

[1] Plaintiff Jason Goodin is not a subject of the motion to compel, but he is a subject of the motion to stay (for reasons described in Part III below).

Plaintiff	Claims Brought Against	Basis for Compelling Arbitration
William Crim	Epicor and the Ace Store Defendants (Am. Compl. ¶ 19)	As an admitted Ace Rewards member, he agreed to arbitrate with Ace Hardware Corporation's "affiliates," which include the Ace Store Defendants. (Part II.)
Gregory Ernst	Epicor and the Ace Store Defendants (Am. Compl. ¶ 20)	As an admitted Ace Rewards member, he agreed to arbitrate with Ace Hardware Corporation's "affiliates," which include the Ace Store Defendants. (Part II.)
Jason Goodin	All Defendants (Am. Compl. ¶ 21)	Not a subject of this motion, but his claims should be stayed. (Part III.)

Factual Background

A. The Ace Rewards Program

The Ace Rewards Program is a free membership club. Members earn points on every purchase at Ace stores, and every 2,500 points earns a $5.00 reward. (Program Terms, Ex. A at 4–5.) Customers agree to the Program Terms as a condition of participation. (Declaration of Rebecca Haas, Ex. B ¶¶ 3–4.) They accept those terms "by enrolling or participating in the Program." (Ex. A at 1 (emphasis removed).) Customers who disagree "should not enroll or otherwise participate in the Program." (*Id.*)

The Program Terms present the arbitration clause transparently. They inform and make clear that claims are subject to binding arbitration and that participants waive class actions. (*Id.*) The clause requires arbitration of all claims relating to Ace products:

> All claims arising out of or relating to any agreement with Ace and any Ace site, product, service, application, or tool, including these Ace Rewards Program Terms and Conditions (collectively, "Ace Offerings"), will be resolved exclusively through binding arbitration according to the Dispute Resolution Terms … . We both agree that all claims must be brought in an individual capacity and not as a plaintiff or class member in any purported class or representative action or proceeding.

(*Id.* at 13.) The clause incorporates the Dispute Resolution Terms. Those terms cover "any claim or dispute … in connection with the Ace Offerings." (Ex. C at 1 (emphasis removed).) They "form part of the legal agreement between you and Ace Hardware Corporation, its subsidiaries, and affiliates." (*Id.*) They also adopt the American Arbitration Association ("AAA") Consumer Rules. (*Id.* at 2.) Both documents select Illinois law. (Ex. A at 13; Ex. C at 5.)

B. The Amended Complaint and the Plaintiffs

The Amended Complaint adds four plaintiffs and eight Ace Store Defendants. It asserts Sherman Act claims for price fixing, market allocation, and information exchange. (Am. Compl. ¶¶ 211–51.) It alleges that Ace Hardware Corporation is "a retailer-owned buyers' cooperative" that the stores (including multiple Defendants here) "own and control." (*Id.* ¶¶ 8, 36.) Its stock "is wholly owned by the Ace Cooperative Member Stores," which elect its board. (*Id.* ¶¶ 53–54.) The Defendants here include Ace Cooperative Member Stores.

Kleekamp. Kleekamp alleges that he lives in Washington, Missouri, and bought from Westlake Ace Hardware at 810 Washington Corners in July 2026. (*Id.* ¶ 22.) Westlake Ace is an Ace Corporate Store owned by Defendant Ace Retail Group, Inc., a subsidiary of Ace Hardware Corporation. (*Id.* ¶¶ 22, 24.) The Amended Complaint asserts that he is not an Ace Rewards member. Ace's records say otherwise. Ace maintains an Ace Rewards account for Adam Kleekamp of Missouri. (Ex. B ¶ 14.) That account was used at the very same Westlake store where he alleges he shops. (*Id.* ¶¶ 13–15; Am. Compl. ¶ 22.)

Twomey. Twomey alleges purchases at Palos Ace Hardware on November 26, 2025, and at Duke's Ace Hardware on December 23, 2025. (Am. Compl. ¶ 18.) Ace's records show purchases under Erica Twomey's Ace Rewards account at the same stores on the same dates.

(Ex. B ¶¶ 10–12.)[2] Those purchases totaled $48.95 at Palos Ace and $22.47 at Duke's Ace. (*Id.* ¶ 12). Logic and common sense indicate that Twomey used an Ace Rewards account to make those purchases (or Sean Twomey did not make the alleged purchases).

Crim and Ernst. Crim and Ernst each admit that he "is a member of the Ace Rewards program." (Am. Compl. ¶¶ 19–20.) Each alleges purchases at stores that are "Ace Rewards participants." (*Id.*) Each brings claims only "against Epicor and the Independent Member Store Defendants." (*Id.*)

Legal Standard

The FAA embodies "a liberal federal policy favoring arbitration agreements." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011) (citations omitted). It requires enforcement of those agreements according to their terms. *Id.* at 344; 9 U.S.C. §§ 2, 4. The FAA "leaves no place for the exercise of discretion by a district court." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Any doubts about scope are resolved in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983). The "party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Green Tree Fin. Corp. Ala. v. Randolph*, 531 U.S. 79, 91 (2000) (citation omitted). These principles apply fully to antitrust claims. *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013).

Argument

Arbitration is the correct forum for four of the five plaintiffs. Courts should compel arbitration where there is "(1) an enforceable written agreement to arbitrate; (2) a dispute within the scope of the arbitration agreement; and (3) a refusal to arbitrate." *Wallrich v. Samsung Elecs. Am., Inc.*, 106 F.4th 609, 618 (7th Cir. 2024) (citation omitted). Each element is met. Kleekamp

[2] On information and belief, Sean Twomey and Erica Twomey are married and share the same address.

and Twomey agreed to arbitrate with Ace (Part I). Crim and Ernst agreed to arbitrate with the Ace Store Defendants as Ace Hardware Corporation's affiliates (Part II). The plaintiffs' claims challenge the prices of Ace products and fall squarely within the clause. Filing this action is a refusal to arbitrate. *Metro. Life Ins. Co. v. O'Malley*, 392 F. Supp. 2d 1042, 1045 (N.D. Ill. 2005). This Court should therefore stay the entire action (Part III).

I. Kleekamp and Twomey Must Arbitrate Their Claims Against Ace

A. Kleekamp and Twomey Agreed to Arbitrate

Both plaintiffs manifested assent to the Program Terms. The threshold question is whether Kleekamp and Twomey formed an agreement to arbitrate with Ace. The court decides that question as a matter of law "if no genuine dispute of material fact exists." *Wallrich*, 106 F.4th at 618. Illinois law governs the formation question.[3] *Domer v. Menard, Inc.*, 116 F.4th 686, 694 (7th Cir. 2024); (Ex. A at 13; Ex. C at 5). It requires only "a manifestation of mutual assent." *Gupta v. Morgan Stanley Smith Barney, LLC*, 934 F.3d 705, 711 (7th Cir. 2019). Courts read that language for "its plain and ordinary meaning" and "give effect to the intent of the parties as demonstrated through objective conduct." *Coatney v. Ancestry.com DNA, LLC*, 93 F.4th 1014, 1020 (7th Cir. 2024) (applying Illinois law) (citations omitted). The Program Terms provide two independent means of assent, "enrolling *or* participating in the Program." (Ex. A at 1 (emphasis added).) To "participate" plainly means "[t]o take part." *Participate*, Oxford English Dictionary (rev. 2005).[4]

[3] As described in Part I.B below, the *scope* of arbitrability is a question for the arbitrator.

[4] The Dispute Resolution Terms form part of the agreement between each Ace Rewards participant and "Ace Hardware Corporation, its subsidiaries, and affiliates." (Ex. C at 1.) They thus apply to all of the Ace Defendants, including Ace Retail Holdings LLC and Ace Retail Group, Inc., which owns and operates Westlake Ace Hardware. (Am. Compl. ¶ 24.) They also apply to the Ace Store Defendants. (Part II.)

1. Kleekamp enrolled in the Program and is bound directly

Kleekamp enrolled in Ace Rewards. He then repeatedly identified his Ace Rewards account at checkout at the same Westlake Ace store where he alleges the purchase underlying his claims. (Ex. B ¶ 15; Am. Compl. ¶ 22.) A "party cannot avoid compelled arbitration by generally denying the facts upon which the right to arbitration rests." *Tinder v. Pinkerton Sec.*, 305 F.3d 728, 735 (7th Cir. 2002). The Amended Complaint's bare assertion that he "is not a member" thus does not create a genuine dispute. The account bears his name. (Ex. B ¶ 14.) The account holder is located in the same state where Kleekamp says he lives. (*Id.*) The account was used at the very store where he shops.[5] (*Id.* ¶ 15.)

2. Twomey participated in the Program through his wife's account

The Program Terms bind anyone who "participat[es]," not only account holders. (Ex. A at 1.) Twomey took part. He presented an Ace Rewards account at checkout for both purchases he alleges. (Ex. B ¶¶ 10–12.) He earned points toward future rewards each time. (Ex. A at 4–5.) That conduct was neither inadvertent nor involuntary. It objectively manifests his intent to participate on the Program's terms. *See Coatney*, 93 F.4th at 1020. The Court must enforce the arbitration clause against him.

Estoppel compels the same result. Nonsignatories may be bound under state-law doctrines, including estoppel. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009); *Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 417 F.3d 682, 687 (7th Cir. 2005). "[I]n Illinois, a person may become bound by a contract through estoppel when he causes others to believe he is bound by it and to rely on that belief detrimentally." *Sunco Int'l Inc. v. Jiangsu Sunco Boiler Co.*, 186 F.4th 931, 935

[5] Any genuine dispute would call for a summary trial, not denial. The FAA directs that "the court shall proceed summarily to the trial thereof." 9 U.S.C. § 4. Should there be any doubt on the issue—which there should not be—Ace would request, in the alternative and only if necessary, limited discovery and a summary trial on that discrete issue. *Deputy v. Lehman Bros., Inc.*, 345 F.3d 494, 510–11 (7th Cir. 2003).

(7th Cir. 2026). Twomey did exactly that. By presenting a Rewards account at checkout, he represented that each purchase was a Program transaction. Ace relied on that representation by extending Program benefits.

A closely analogous case confirms that Twomey's conduct binds him. *Corn v. Kohl's Corp.*, 2025 WL 1785943, at *1–3 (N.D. Cal. June 9, 2025). The plaintiff in *Corn* entered her husband's phone number at checkout to link her purchases to his rewards account. *Id.* at *1. The court held that she "knowingly exploited the Rewards Agreement because she took affirmative steps to associate her transaction with her husband's Kohl's Rewards Account." *Id.* at *2. She was therefore bound by the rewards agreement. *Id.* at *3. The court to which the case was transferred later compelled arbitration. *Corn v. Kohl's Corp.*, 2026 WL 867896, at *4–8 (E.D. Wis. Mar. 30, 2026). The facts here are materially indistinguishable. The Court should reach the same result.

B. The Ace Dispute Resolution Terms Delegate Arbitrability to the Arbitrator, and the Claims Fall Within the Clause in Any Event

Any questions regarding the *scope* or *enforceability* of the arbitration provision should be submitted to arbitration in the first instance. Parties may "delegate threshold arbitrability questions to the arbitrator" by "clear and unmistakable evidence." *Wallrich*, 106 F.4th at 620 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019)). The Dispute Resolution Terms delegate arbitrability to the arbitrator by incorporating the AAA Consumer Rules. (Ex. C at 2.) Nearly every circuit treats that incorporation as clear and unmistakable delegation. *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 846 (6th Cir. 2020) (collecting cases). Courts in this District agree. *Sha-Poppin Gourmet Popcorn LLC v. JPMorgan Chase Bank, N.A.*, 553 F. Supp. 3d 452, 458–59 (N.D. Ill. 2021); *Nandorf, Inc. v. Applied Underwriters Captive Risk*

Assurance Co., 410 F. Supp. 3d 882, 888–89 (N.D. Ill. 2019). The Court should follow the overwhelming consensus and let an arbitrator decide arbitrability.

Even if the Court reaches scope, the result is the same. Courts resolve "any doubts concerning the scope of arbitrable issues" in favor of arbitration. *Bigger v. Facebook, Inc.*, 947 F.3d 1043, 1051 (7th Cir. 2020) (quoting *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24). "[A]rising out of or relating to" language is "extremely broad and capable of an expansive reach." *Gore v. Alltel Commc'ns, LLC*, 666 F.3d 1027, 1034 (7th Cir. 2012) (quoting *Kiefer Specialty Flooring, Inc. v. Tarkett, Inc.*, 174 F.3d 907, 909 (7th Cir. 1999)). The clause here covers "[a]ll claims arising out of or relating to any … Ace … product." (Ex. A at 13.) The plaintiffs' claims arise from Ace's alleged anticompetitive product pricing. (Am. Compl. ¶¶ 220, 231, 250.) No claim relates more directly to Ace products than one challenging their prices.

C. The Class Action Waiver Requires Individual Arbitration

The Program Terms require that "all claims must be brought in an individual capacity." (Ex. A at 13.) Class waivers are enforceable under the FAA. *Concepcion*, 563 U.S. at 341–47. That rule applies to federal antitrust claims. *Italian Colors*, 570 U.S. at 233–34. A party cannot be compelled to submit to class arbitration absent an agreement to do so. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010). Each compelled plaintiff must arbitrate individually.

II. The Ace Store Defendants May Enforce the Arbitration Agreement

Their opportunistic tactic of not naming Ace Hardware Corporation in their particular Counts does not let Crim and Ernst escape their agreement to arbitrate this lawsuit (including their claims against the Ace Store Defendants). Both admit they are Ace Rewards members and thus agreed to the Program Terms. (Am. Compl. ¶¶ 19–20.) That agreement runs to "Ace Hardware Corporation, its subsidiaries, and affiliates." (Ex. C at 1.) The Ace Store Defendants are

"affiliates" under the language and intent of the Program Terms. They may enforce the agreement directly or, alternatively, as intended third-party beneficiaries.

A. The Ace Store Defendants Are Parties to the Agreement as Affiliates

The Ace Store Defendants fall within the plain meaning of "affiliates." This Court has consistently held that the undefined term is unambiguous. *Exactlogix, Inc. v. Jobprogress, LLC*, 2022 WL 1004423, at *2 (N.D. Ill. Apr. 4, 2022); *Chillmark Partners, LLC v. MTS, Inc.*, 2003 WL 1964408, at *3 (N.D. Ill. Apr. 25, 2003). It applies the Black's Law Dictionary definition: "a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation." *Exactlogix*, 2022 WL 1004423, at *2 (quoting *Affiliate*, Black's Law Dictionary (11th ed. 2019)) (alteration removed).

The plaintiffs' own allegations satisfy that definition. They allege that the Ace Store Defendants "own and control Ace Hardware Corporation." (Am. Compl. ¶ 36.) They allege that its stock is "wholly owned by the Ace Cooperative Member Stores." (*Id.* ¶ 53.) Ownership and control are the core of the definition. These allegations are judicial admissions. *Moran v. Calumet City*, 54 F.4th 483, 494 (7th Cir. 2022). A plaintiff who premises a complaint on a relationship cannot later disclaim it. *L.A. v. Take-Two Interactive Software, Inc.*, 2022 WL 22909765, at *2–3 (N.D. Ill. Oct. 3, 2022). The plaintiffs built their complaint on the stores' ownership and control of Ace Hardware Corporation. They are bound by that admission.

Ace's Franchise Disclosure Documents confirm the affiliation.[6] Stores obtain "membership in the cooperative" by purchasing Ace stock. (Ex. D at 7.) New stores pay "affiliation fee[s]." (*Id.* at 9.) The documents call the stores "Ace-affiliated retail hardware stores," and each branded store must "[s]how the Ace affiliation" in its advertising. (*Id.* at 13, 16.)

[6] Plaintiffs rely on the Ace Hardware Corporation, 2025 Franchise Disclosure Document in their Amended Complaint. (*See, e.g.*, Am. Compl. ¶ 8 n.4.)

Chillmark and *Exactlogix* rejected affiliate status only because the parties claiming it were individuals, not corporations. 2003 WL 1964408, at *3–4; 2022 WL 1004423, at *3. The Ace Store Defendants are corporations and LLCs.

As affiliates, the stores are parties to the agreement and may enforce it. *Mey v. DIRECTV, LLC*, 971 F.3d 284 (4th Cir. 2020), is directly on point. The arbitration agreement there covered AT&T Mobility's "affiliates." *Id.* at 287. DIRECTV became an affiliate only after the plaintiff accepted the agreement. *Id.* at 289–90. The court still held that "[t]he ordinary meaning of 'affiliates' and the contractual context" covered DIRECTV, which could therefore compel arbitration. *Id.* at 291. The case for enforcement is stronger here. The stores' affiliation is the foundation of the Ace cooperative. It existed when Crim and Ernst enrolled.

To the extent the plaintiffs cite to the Ninth Circuit's decision in *Revitch v. DIRECTV, LLC*, 977 F.3d 713, 718 (9th Cir. 2020), that case is inapposite. The court in *Revitch* refused to extend "affiliates" to an entity joined through an unforeseeable "unrelated corporate acquisition." *Revitch*, 977 F.3d at 718. No such surprise exists here. Ace stores advertise their affiliation and promote Ace Rewards enrollment on their own websites. *See, e.g.*, *Ace Rewards*, Elder's Ace, https://www.eldershardware.com/ace-rewards (last visited Oct. 27, 2026). It also makes no difference that the plaintiffs shopped at non-defendant stores. (Am. Compl. ¶¶ 19–20.) The clause reaches all claims relating to Ace products, regardless of where they were bought or which affiliate is sued. (Ex. A at 13; Ex. C at 1.)

B. Even if the Ace Store Defendants Were Not Parties, They Would Be Intended Third-Party Beneficiaries

The Dispute Resolution Terms expressly name the stores' class as beneficiaries. Illinois applies the third-party beneficiary doctrine to arbitration agreements. *Dannewitz v. Equicredit Corp. of Am.*, 775 N.E.2d 189, 192 (Ill. App. Ct. 2002). Illinois presumes that contracts do not

benefit third parties. *Washington v. Persona Identities, Inc.*, 254 N.E.3d 394, 404 (Ill. App. Ct. 2024). But an "express provision … identifying the third-party beneficiary by name or by description of a class to which the third party belongs" overcomes that presumption. *Id.* (citation omitted). The Dispute Resolution Terms name such a class, "affiliates." (Ex. C at 1.) The stores belong to it. The stores are also central to the Program. Members use their accounts, make purchases, and earn rewards at the stores. The stores participate as "a condition of joining the Ace Rewards program." (Am. Compl. ¶ 37.) The program runs through them.

For those reasons, the circumstances showing intended third-party beneficiary status here are quite strong. Even so, Illinois courts have found intended-beneficiary status on far weaker facts. In *Tortoriello*, a bank could enforce a car dealer's arbitration clause because the purchase agreement was "expressly conditioned on third party finance approval." *Tortoriello v. Gerald Nissan of N. Aurora, Inc.*, 882 N.E.2d 157, 180–81 (Ill. App. Ct. 2008) (internal quotation marks omitted). That agreement only contemplated that some third party would take part. The Dispute Resolution Terms go further and name "affiliates" as a covered class.

The delegation, scope, and class-waiver principles in Parts I.B and I.C apply equally to Crim and Ernst. They also must arbitrate their claims against the Ace Store Defendants.

III. The Entire Action Should Be Stayed Pending Arbitration

A stay is mandatory for the arbitrable claims. "For arbitrable issues, a § 3 stay is mandatory." *Volkswagen of Am., Inc. v. Sud's of Peoria, Inc.*, 474 F.3d 966, 971 (7th Cir. 2007) (citation omitted); 9 U.S.C. § 3. Section 3 "compels the court to stay the proceeding" when a party requests it. *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024); *Nat'l Cas. Co. v. Cont'l Ins. Co.*, 121 F.4th 1151, 1153 (7th Cir. 2024). The Court therefore must stay the claims of Kleekamp, Twomey, Crim, and Ernst.

The Court should also stay the remaining claims, which are Goodin's claims and the claims against Epicor. That decision rests within the Court's discretion. *Volkswagen*, 474 F.3d at 971. A complete stay is warranted where the arbitration is "likely to resolve issues material to [the] lawsuit." *Id.* at 972 (quoting *AgGrow Oils, L.L.C. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 242 F.3d 777, 783 (8th Cir. 2001)) (alteration in original). Courts weigh the risk of inconsistent rulings, whether the parties will be bound, prejudice from delay, and the burden on judicial resources. *Id.*; *WMS Gaming, Inc. v. IGT*, 31 F. Supp. 3d 974, 979 (N.D. Ill. 2014). Each factor favors a complete stay.

Inconsistent rulings. The plaintiffs plead one conspiracy for every plaintiff, and every count incorporates every allegation. (Am. Compl. ¶¶ 211, 214–215, 222, 233.) Goodin's claims thus turn on the same alleged agreement that the arbitrators will decide. The plaintiffs concede that separate litigation risks "inconsistent or contradictory judgments." (*Id.* ¶ 208.) This Court has stayed claims in exactly these circumstances. In *Dealer Management Systems*, this Court stayed claims against one alleged conspirator while its co-conspirator arbitrated. *In re Dealer Mgmt. Sys. Antitrust Litig.*, 2020 WL 832365, at *7 (N.D. Ill. Feb. 20, 2020). An earlier ruling "might taint the arbitration process or simply produce a different result." *Id.*; *see also WMS Gaming*, 31 F. Supp. 3d at 977–78; *Elsasser v. DV Trading, LLC*, 444 F. Supp. 3d 916, 929 (N.D. Ill. 2020); *Matricciani v. Am. Homeowner Pres., Inc.*, 718 F. Supp. 3d 825, 844 (N.D. Ill. 2024).

Remaining factors. The other factors likewise support a stay. The arbitrators' resolution of the common issues will shape Goodin's identical theory. That the non-arbitrating parties may not be formally bound matters little where counsel chose one conspiracy theory for all five plaintiffs. *See WMS Gaming*, 31 F. Supp. 3d at 979. Goodin suffers no prejudice because the relief he seeks remains available after arbitration. *See id.* Parallel litigation would also require

"duplicating work." *Dealer Mgmt.*, 2020 WL 832365, at *7. The Court should stay this action in its entirety.

Conclusion

The Court should (1) compel Kleekamp and Twomey to arbitrate their claims against Ace individually; (2) compel Kleekamp, Twomey, Crim, and Ernst to arbitrate their claims against the Ace Store Defendants individually; and (3) stay this action in its entirety pending those arbitrations.

DATED: October 30, 2026

Respectfully submitted,

By: /s/ *John J. Hamill*

John J. Hamill
john.hamill@us.dlapiper.com
Michael S. Pullos
michael.pullos@us.dlapiper.com
Pamela Begaj Loutos
pamela.loutos@us.dlapiper.com
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
Tel: 312-368-4000
Fax: 312-236-7516

Counsel for Defendants Ace Hardware Corporation, Ace Retail Holdings LLC, Ace Retail Group, Inc., Ace Hardware of Chattanooga, Inc., Bellmore Home Center, Inc. (d/b/a "Costello's Ace Hardware"), Bolster Hardware LLC, The Helpful Hardware Company, LLC, The Helpful Group, LLC, Niemann Foods, Inc., W.E. Aubuchon Co., Inc., and Whitmore Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on October 30, 2026, I electronically filed the foregoing document using the ECF System for the United States District Court for the Northern District of Illinois. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record registered on the ECF system.

/s/ *Michael S. Pullos*
Michael S. Pullos