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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ELLISON FRAMING, INC.,  
Plaintiff,  
v.  
ZURICH AMERICAN INSURANCE  
COMPANY,  
Defendant.

No. CIV. S-11-0122 LKK/DAD  
No. CIV. S-13-1761 JAM/AC

**ORDER**

Plaintiff Ellison Framing, Inc. simultaneously filed a new complaint in this action, without leave of court and in apparent violation of a stay order, as well as in a new case, which was assigned to the Hon. John A. Mendez. Defendant Zurich American Insurance Company now moves to (i) consolidate the two cases in this court, (ii) strike the new complaint, and (iii) enforce the standing arbitration order.

Zurich's motions came on for hearing on December 9, 2013. Having considered the matter, the motions will be granted, for the reasons set forth below.

1           **I.       MOTION TO CONSOLIDATE**

2           Zurich moves to consolidate the action pending before Judge  
3 Mendez with the existing action in this court.

4                           **A. Background re: Motion to Consolidate**  
5                                   **1. 2011 Complaint**

6           On January 6, 2011, Ellison commenced the instant action by  
7 filing a complaint in Sacramento County Superior Court, case  
8 no. 34-2011-00094691 ("2011 Complaint"). One week later, Zurich  
9 removed the action to this court.

10           The 2011 Complaint concerns certain disputes over a Workers  
11 Compensation insurance policy that Ellison obtained from Zurich.  
12 On November 15, 2010, Ellison had filed a complaint with the  
13 California Department of Insurance regarding \$195,000.00 in "cost  
14 containment" fees that it claimed Zurich had improperly charged  
15 it. (Complaint ¶ 5, ECF No. 1.) Approximately one month later,  
16 Zurich made an arbitration demand, alleging that Ellison owed it  
17 \$569,640.97 in unpaid deductibles, pursuant to "deductible  
18 agreements"<sup>1</sup> between the parties; relevant clauses in these

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19 \_\_\_\_\_  
20 <sup>1</sup> According to an exhibit filed by Zurich: "A workers'  
21 compensation large deductible agreement . . . is an agreement in  
22 which an insurer is obligated to pay workers' compensation  
23 insurance benefits to claimants . . . but as between the insurer  
24 and the insured, the insured agrees to bear the risk of loss  
25 within a specified amount per claim or per occurrence. Under an  
26 LDA, the insured agrees to reimburse or otherwise pay the insurer  
27 for claims payments made by the insurer, typically up to an  
28 aggregate cap. The insured may also agree to reimburse or  
otherwise pay the insurer for loss adjustment expenses and/or  
other claims or policy related expenses. The amounts that the  
insured agrees to reimburse or pay are substantial, often  
equaling 100% of the amounts paid by the insurer to satisfy  
workers' compensation insurance claims." (Notice of Hearing and  
Order to Show Cause re Issuance of Orders 4-5, Decl. Dow Exh B.,  
ECF No. 26-2.)

1 agreements identified Schaumburg, Illinois as the arbitral venue  
2 and specified that the arbitration would be governed by New York  
3 state law. After considering Zurich's arbitration demand, the  
4 American Arbitration Association ("AAA") determined that the  
5 arbitration would be conducted in Schaumburg. In the 2011  
6 Complaint, Ellison sought compensatory damages of \$195,000.00,  
7 and declaratory and injunctive relief regarding the purported  
8 unconscionability of the arbitration provision.

9       Upon removal to this court, Zurich filed a motion to stay  
10 the action and compel arbitration pursuant to the Federal  
11 Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA"). (ECF No. 5.) After  
12 hearing, the court granted Zurich's motion. See Ellison Framing,  
13 Inc. v. Zurich Am. Ins. Co., 805 F. Supp. 2d 1006 (E.D. Cal.  
14 2011) ("Arbitration Order"). The Arbitration Order held in  
15 pertinent part as follows:

- 16       • Ellison was unable to demonstrate that the venue clause  
17       in the arbitration provision was unconscionable. Zurich  
18       introduced un rebutted evidence that the parties actively  
19       negotiated the terms of the deductible agreements,  
20       thereby demonstrating both that Ellison had bargaining  
21       power and that these agreements were not contracts of  
22       adhesion. The agreements therefore lacked procedural  
23       unconscionability. Ellison also failed to introduce  
24       evidence of the financial infeasibility of arbitrating in  
25       Illinois. Finally, the court determined that a challenge  
26       to the venue provision (as opposed to the arbitration  
27       clause as a whole) was properly presented to the  
28       arbitrator. Ellison Framing, 805 F. Supp. 2d at 1011.



1 court, under the previous case number (ECF No. 24); the other  
2 with Judge John A. Mendez, case no. 2:13-cv-01761-JAM-AC.

3 The 2013 Complaints allege, *inter alia*, that:

- 4 • The arbitration in Illinois was stayed "pursuant to State  
5 of California regulatory action against Zurich, among  
6 other issues, with regard to the form under which the  
7 out-of-state arbitration provision was set forth." (2013  
8 Complaints 2-3.)
- 9 • In July 2013, the State of California and Zurich entered  
10 into a Settlement Agreement to resolve the regulatory  
11 action. (Id. 3.)
- 12 • Under the Settlement Agreement, Zurich waived its right  
13 to enforce the deductible agreements pursuant to which it  
14 sought \$569,640.97 in unpaid deductibles from Ellison.  
15 (Id. 3.)

16 In the 2013 Complaints, Ellison sought declaratory and injunctive  
17 relief regarding Zurich's waiver of its contractual rights under  
18 the deductible agreements, and monetary damages of \$500,000.00  
19 for "bad faith." (Id. 3, 5.)

20 On September 5, 2013, Zurich filed a Notice of Related Cases  
21 in both courts, as required by Local Rule 123. (ECF No. 25.)  
22 Eight days later, Judge Mendez issued an Order to Show Cause why  
23 the action in his court should not be dismissed as duplicative of  
24 the instant action. (No. 2:13-cv-01761-JAM-AC, ECF No. 6.) In its  
25 response, Ellison claimed that the 2013 Complaint it had filed  
26 before Judge Mendez arose from conduct different from that  
27 alleged in the 2011 Complaint. (No. 2:13-cv-01761-JAM-AC, ECF  
28 No. 7.) By minute order dated September 20, 2013, Judge Mendez

1 determined that, good cause having been shown, he would not  
2 dismiss the action pending in his court. (No. 2:13-cv-01761-JAM-  
3 AC, ECF No. 8.) But Ellison's response to the OSC failed to  
4 address the central issue raised by Zurich's motion to  
5 consolidate: the identity of the two 2013 Complaints. Nowhere in  
6 its response (and, in fact, nowhere in its oppositions to the  
7 instant motions) did Ellison address the fact that it has filed  
8 two identical complaints in two different actions in this  
9 judicial district.

10 Currently pending before Judge Mendez are Zurich's motion to  
11 strike and dismiss the 2013 Complaints in that court as  
12 duplicative of the 2013 Complaints in this court, or  
13 alternatively, for an order compelling the parties to arbitrate  
14 their dispute. (No. 2:13-cv-01761-JAM-AC, ECF No. 10.) That  
15 motion is set for hearing on January 22, 2014.

16  
17 **B. Standard re: Motion to Consolidate**

18 Federal Rule of Civil Procedure 42(a) provides as follows:

19 (a) Consolidation. If actions before the  
20 court involve a common question of law or  
21 fact, the court may:

22 (1) join for hearing or trial any or all  
23 matters at issue in the actions;

24 (2) consolidate the actions; or

25 (3) issue any other orders to avoid  
26 unnecessary cost or delay.

27 Under this rule, the district court has broad discretion to  
28 consolidate cases pending in the judicial district, even if one  
or more of those cases is pending before a different judge.

1 Investors Research Co. v. United States Dist. Court for Central  
2 Dist. of California, 877 F.2d 777 (9th Cir. 1989).

3 The standards governing a Rule 42(a) motion are as follows:

4 The critical question for the district court  
5 in the final analysis [i]s whether the  
6 specific risks of prejudice and possible  
7 confusion [a]re overborne by the risk of  
8 inconsistent adjudications of common factual  
9 and legal issues, the burden on parties,  
10 witnesses and available judicial resources  
11 posed by multiple lawsuits, the length of  
12 time required to conclude multiple suits as  
13 against a single one, and the relative  
14 expense to all concerned of the single-trial,  
15 multiple-trial alternatives.

12 Arnold v. E. Air Lines, Inc., 681 F.2d 186, 193 (4th Cir.  
13 1982) (cited with approval for this point by 9A Charles Alan  
14 Wright & Arthur R. Miller, Federal Practice and Procedure: Civil  
15 § 2383 (3d. ed. 2012)). "Considerations of convenience and  
16 economy must yield to a paramount concern for a fair and  
17 impartial trial." Johnson v. Celotex Corp., 899 F.2d 1281, 1285  
18 (2d Cir. 1990), cert. denied, 498 U.S. 920 (1990).

19 The moving party bears the burden of demonstrating that  
20 consolidation is appropriate. In re Consol. Parlodel Litig., 182  
21 F.R.D. 441, 444 (D.N.J. 1998); Internet Law Library, Inc. v.  
22 Southridge Capital Mgmt., LLC, 208 F.R.D. 59, 61 (S.D.N.Y. 2002).

### 23 **C. Analysis re: Motion to Consolidate**

24 Every factor to be considered in the Rule 42(a) analysis  
25 weighs in favor of consolidation. The 2013 Complaints are  
26 identical, and therefore present identical questions of law and  
27 fact. While the 2013 Complaints and the 2011 Complaint seek  
28 different remedies, the declaratory and injunctive relief sought

1 in the 2013 Complaints directly implicates this court's  
2 Arbitration Order - Ellison is essentially seeking to vacate this  
3 court's referral of this matter to arbitration, in favor of a  
4 judicial determination that Zurich waived its right to enforce  
5 the deductible agreements. If such a determination is to be made,  
6 it should be made by this court; the alternative would be to  
7 leave open the possibility of either a judicial or arbitral  
8 determination regarding enforceability in this action (whether in  
9 this court, or in arbitration ordered by this court), and an  
10 inconsistent judicial determination regarding enforceability in  
11 another action. Parallel arbitral and judicial proceedings would  
12 increase the burdens on the parties and witnesses, extend the  
13 length of time required to resolve the disputes herein, and  
14 invariably drive up the parties' legal expenses. Finally, there  
15 is nothing before the court to suggest that Ellison's right to  
16 fair and impartial proceedings would be impaired by  
17 consolidation.

18 Ellison's principal argument against consolidation is that  
19 Judge Mendez, by vacating the OSC, determined that the 2013  
20 Complaint did not share common questions of law or fact with the  
21 2011 Complaint. This argument is unavailing, as there is nothing  
22 before the court to suggest that Judge Mendez made such a  
23 determination. The record, consisting of a minute order, only  
24 shows that he refused to "dismiss this action as duplicative."  
25 While Ellison's response to the OSC elaborated on the differences  
26 between the 2011 Complaint and the 2013 Complaint, that filing  
27 neither disclosed to Judge Mendez that Ellison had filed an  
28 identical 2013 Complaint before this court, nor did it provide



1 any explanation for the duplicative filing. In light of these  
2 omissions, one cannot read Judge Mendez's minute order as making  
3 any substantive determination as to the identity or non-identity  
4 of the two actions.

5 In light of the foregoing, consolidation in this court  
6 appears warranted.

## 7 **II. MOTION TO STRIKE**

8 Zurich moves to strike the 2013 Complaint on the grounds  
9 that, by filing this complaint, Ellison both (i) violated the  
10 stay under the Arbitration Order and (ii) effectively filed an  
11 amended complaint, in violation of Rule 15(a)(2).<sup>2</sup>

12 Striking the 2013 Complaint seems appropriate. It is  
13 axiomatic that an action may have only one operative complaint.  
14 See, generally, 6 Charles Alan Wright & Arthur R. Miller, Federal  
15 Practice and Procedure: Civil § 1476 (3d. ed. 2013) ("Effect of  
16 an Amended Pleading"). And, as Zurich points out, Ellison  
17 violated the stay order by filing the 2013 Complaint. The proper  
18 course of action would have been for Ellison to notify the court  
19 as to the status of the arbitration; if Ellison contended that  
20 changed circumstances (specifically, the Settlement Agreement)  
21 meant that the parties' dispute was no longer arbitrable or that  
22 new issues were presented, it could have sought leave from the  
23 court to lift the stay.

24 Accordingly, the 2013 Complaint will be stricken in its  
25 entirety.

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26 <sup>2</sup> Under Rule 15(a)(2), once the deadline for amending a pleading  
27 as a matter of course has expired, "a party may amend its  
28 pleading only with the opposing party's written consent or the  
court's leave."

1           **III. MOTION TO ENFORCE ARBITRATION ORDER**

2           Finally, Zurich moves the court to enforce its Arbitration  
3 Order and direct the parties to continue to arbitrate their  
4 claims and defenses.

5                           **A. Background re: Motion to Enforce Arbitration Order**

6           In support of this motion, Zurich has provided the  
7 declaration of its employee, one Nancy Dow. (Decl. Dow, ECF  
8 No. 26-2). Ellison provides no evidence of its own in opposition,  
9 nor has it otherwise objected to Dow's declaration. The facts set  
10 forth herein are therefore taken from Dow's declaration and the  
11 exhibits that it introduces.

12           On February 27, 2012, the California Department of Insurance  
13 initiated administrative proceedings against Zurich before the  
14 California Insurance Commissioner, case no. DISP-2011-00811.  
15 (Decl. Dow ¶ 4 & Exh. B.) The core allegation therein is that  
16 Zurich issued deductible agreements (the contracts that were the  
17 subject of the Arbitration Order) without first filing these  
18 agreements with the Insurance Commissioner for review.

19           On July 11, 2013, Zurich and the California Department of  
20 Insurance entered into the Settlement Agreement, a copy of which  
21 is attached to the Dow Declaration. The Agreement has several  
22 provisions that arguably conflict with one another, and  
23 consequently, are at issue in the instant motion. These are  
24 reproduced below.

25           Paragraph 13 provides in pertinent part:

26                           Zurich agrees that it will waive enforcement  
27                           of its contractual rights under Deductible  
28

1 Agreements used prior to the Start Date<sup>3</sup> with  
2 California Employers that require: (i) that  
3 arbitration of disputes take place in  
4 Schaumburg, Illinois, and (ii) the  
5 application of New York law to such disputes.  
6 Arbitration will take place in California and  
7 California law and venue will apply in the  
8 arbitration of such disputes (without giving  
9 effect to California conflicts of laws  
10 principles) unless the parties agree to the  
11 application of another law or venue. The  
12 foregoing waiver does not apply to any  
13 dispute involving a California Employer which  
14 (i) has been resolved by a settlement  
15 agreement signed as of the Start Date, (ii) a  
16 trier of fact in a trial or evidentiary  
17 hearing (in the case of arbitration) has  
18 rendered his or her finding as of the Start  
19 Date, or (iii) was in litigation or  
20 arbitration that is final as of the Start  
21 Date. (Decl. Dowd ¶ 5 & Exh. C.)

22 Paragraph 14 provides in pertinent part:

23 Zurich agrees that, for matters involving a  
24 Current Dispute . . . it will grant  
25 California Employers the one-time option  
26 either to adhere to the binding arbitration  
27 provisions in their Deductible Agreements (in  
28 addition to the waivers set forth in  
paragraph 13) or to litigate disputes  
otherwise falling within the scope of such  
binding arbitration provisions in a  
California civil proceeding, without  
prejudice to any party's right to commence or  
remove such proceeding in or to Federal court  
in California. As used in this paragraph 14,  
a Current Dispute includes any dispute or  
claim for which no final decision has been  
issued or settlement agreement signed by the

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3 The Settlement Agreement defines "Start Date" as "the later of  
(1) the date that sixty (60) days after the Effective Date and  
(2) the date the Deductible Agreement and Large Deductible  
Endorsement forms . . . are deemed approved for use in California  
after filing with the Department of Insurance . . . ."  
"Effective Date," in turn, is defined as "the date the Settlement  
becomes effective pursuant to the Insurance Commissioner's order  
approving and adopting this Settlement Agreement."

1 parties prior to the Cutoff Date<sup>4</sup> and to  
2 which one of the following applies:

3 . . .

4 (2) Any dispute or claim for which a written  
5 arbitration demand has been made prior to the  
6 Cutoff Date, and no arbitration has been  
7 commenced; or

8 (3) Any dispute or claim which is subject of  
9 a pending arbitration as of the Cutoff Date.  
10 (Id.)

11 Paragraph 19 provides in pertinent part:

12 [S]ubject to paragraphs 13 and 14, the  
13 Department of Insurance will not require  
14 Zurich to waive any Deductible Agreement  
15 terms.

16 Paragraph 23 provides:

17 Except for the express waiver by Zurich set  
18 forth in paragraph 13 and one-time option  
19 granted by Zurich in paragraph 14, nothing in  
20 this Settlement Agreement or any of its terms  
21 and conditions shall alter the contractual  
22 terms of any Zurich insurance policy,  
23 Deductible Agreement or other agreement.

24 Finally, paragraph 25 provides in pertinent part:

25 This Settlement Agreement is not intended to  
26 and shall not confer any rights upon any  
27 persons or entities besides the Department of  
28 Insurance and Zurich. (Id.)

29 On August 6, 2013, Zurich's counsel sent Ellison's counsel  
30 an email offering to "either (a) proceed with the pending  
31 arbitration before [AAA], with the understanding that the venue  
32 would be moved to California upon Ellison's request, or  
33 (b) return to . . . the Eastern District of California and

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34 <sup>4</sup> The Settlement Agreement defines "Cutoff Date" as May 1, 2013.

1 request that all of the parties' disputes proceed before Judge  
2 Karlton." (Decl. Dow ¶ 4 & Exh. D.) The email gave Ellison an  
3 August 13, 2013 deadline to decide. (Id.) On August 13, Ellison's  
4 counsel responded, contending that neither option was acceptable  
5 as, under paragraph 13, *supra*, Zurich had waived enforcement of  
6 its contractual rights under the deductible agreements, except as  
7 to disputes resolved by settlement, a finding by a trier of fact,  
8 or through already-concluded litigation or arbitration. (Id.) On  
9 August 14, Zurich's counsel replied, maintaining that Zurich had  
10 not waived its right to collect the amounts due by Ellison, and  
11 extending Ellison's deadline to respond to its offer by one week.  
12 (Id.) That same day, Ellison's counsel replied, reiterating his  
13 position, and contending that Zurich was not acting in good  
14 faith. (Id.) On August 16, Zurich's counsel, responded,  
15 reiterating her position. (Id.) On August 24, Ellison's counsel  
16 filed the two 2013 Complaints in this district.

17 **B. Standard re: Motion to Enforce Arbitration Order**

18 Section 2 of the FAA provides that contractual arbitration  
19 clauses are "valid, irrevocable, and enforceable, save upon such  
20 grounds as exist at law or in equity for the revocation of any  
21 contract." 9 U.S.C. § 2. Section 4 of the FAA permits a "party  
22 aggrieved by the alleged failure, neglect, or refusal of another  
23 to arbitrate under a written agreement for arbitration [to]  
24 petition any United States district court . . . for an order  
25 directing that . . . arbitration proceed in the manner provided  
26 for in [the arbitration] agreement." 9 U.S.C. § 4. If the court  
27 is satisfied "that the making of the arbitration agreement or the  
28 failure to comply with the agreement is not in issue, the court

1 shall make an order directing the parties to proceed to  
2 arbitration in accordance with the terms of the agreement.” Id.

3 A district court’s role under the FAA is to determine  
4 “(1) whether a valid agreement to arbitrate exists, and, if it  
5 does, (2) whether the agreement encompasses the dispute at  
6 issue.” Kilgore v. KeyBank, Nat. Ass’n, 718 F.3d 1052, 1058 (9th  
7 Cir. 2013) (*en banc*) (quoting Chiron Corp. v. Ortho Diagnostic  
8 Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)). If these  
9 requirements are met, the FAA mandates the district court to  
10 direct the parties to arbitration. Id.

11 The Supreme Court has repeatedly held that “attacks on the  
12 validity of an entire contract, as distinct from attacks aimed at  
13 the arbitration clause, are within the arbitrator’s ken.” Preston  
14 v. Ferrer, 552 U.S. 346, 353 (2008). Accord Prima Paint Corp. v.  
15 Flood & Conklin Mfg Co., 388 U.S. 395, 404 (1967) (“[W]ith  
16 respect to a matter within the jurisdiction of the federal courts  
17 save for the existence of an arbitration clause, the federal  
18 court is instructed to order arbitration to proceed once it is  
19 satisfied that ‘the making of the agreement for arbitration or  
20 the failure to comply (with the arbitration agreement) is not in  
21 issue.’”) (quoting 9 U.S.C. § 4); Buckeye Check Cashing, Inc. v.  
22 Cardegna, 546 U.S. 440, 445-6 (2006) (“[U]nless the challenge is  
23 to the arbitration clause itself, the issue of the contract’s  
24 validity is considered by the arbitrator in the first  
25 instance.”).

26 ////

27 ////

28 ////

1                   **C. Analysis re: Motion to Enforce Arbitration Order**

2           The parties' dispute turns on whether the deductible  
3 agreements are now unenforceable, given the terms of the  
4 Settlement Agreement. In advancing its argument for  
5 unenforceability, Ellison attacks the validity of the contract as  
6 a whole, rather than the validity of the arbitration clause. It  
7 is well-settled that once a matter has been deemed subject to  
8 arbitration, the validity of the underlying contract is a  
9 question for the arbitrator, rather than for the court. Preston,  
10 552 U.S. at 353.

11           Ellison does not present any sensible argument in opposition  
12 to this point. Its sole citation of substance, to Orion Pictures  
13 Corp. v. Writers Guild of Am., 946 F.2d 722 (9th Cir. 1991), is  
14 inapt. Orion stands for the proposition that "[a] district court  
15 may resolve questions about the jurisdiction of an arbitrator de  
16 novo pursuant to the Declaratory Judgment Act, and may do so even  
17 after the arbitrator has asserted jurisdiction over the dispute,"  
18 so long as the party seeking a judicial determination was not the  
19 one that invoked arbitration in the first place. Id. at 725. But  
20 there is no question about the arbitrability of this matter; that  
21 question was resolved by the court's 2011 Arbitration Order.  
22 Ellison's present challenge is to the validity of the deductible  
23 agreements, a question that is unequivocally for the arbitrator -  
24 unless, pursuant to the Settlement Agreement, Ellison had opted  
25 to proceed in this court.

26           Zurich twice presented Ellison with the option to elect a  
27 judicial forum; Ellison declined to elect the option, and instead  
28 appears to have forum-shopped for a new judge. In light of

1 Ellison's conduct, this court's previous order compelling  
2 arbitration, and the numerous Supreme Court cases holding that  
3 the validity of the contract of whole is a matter for the  
4 arbitrator, it appears that this matter must be arbitrated.

5 One further matter requires the court's attention. On  
6 August 6, 2013, Zurich's counsel sent Ellison's counsel an email  
7 offering to "either (a) proceed with the pending arbitration  
8 before [AAA], with the understanding that the venue would be  
9 moved to California upon Ellison's request, or (b) return  
10 to . . . the Eastern District of California and request that all  
11 of the parties' disputes proceed before Judge Karlton." (Decl.  
12 Dow ¶ 4 & Exh. D.) Contrary to Zurich's counsel understanding,  
13 the Settlement Agreement does not appear to require that Ellison  
14 request a California arbitral forum; instead, it provides that  
15 "[a]rbitration will take place in California and California law  
16 and venue will apply in the arbitration of such disputes (without  
17 giving effect to California conflicts of laws principles) unless  
18 the parties agree to the application of another law or venue."  
19 (Settlement Agreement ¶ 13.) Accordingly, unless they agree  
20 otherwise, the parties will arbitrate this matter in California,  
21 under California law.

#### 22 **IV. CONCLUSION**

23 The court hereby orders as follows:

24 [1] Ellison Framing, Inc. v. Zurich Am. Ins. Co., No. 2:13-  
25 cv-01761-JAM-AC, and Ellison Framing, Inc. v. Zurich Am.  
26 Ins. Co., No. 2:11-cv-00122-LKK-DAD are CONSOLIDATED in this  
27  
28



1 court. All future filings are to be made only in case  
2 No. 2:11-cv-00122-LKK-DAD.

3  
4 [2] All hearing dates in case No. 2:13-cv-01761-JAM-AC are  
5 VACATED.

6  
7 [3] The Clerk of the Court is DIRECTED to administratively  
8 close case No. 2:13-cv-01761-JAM-AC.


9  
10 [4] The complaint filed at ECF No. 24 is STRICKEN in its  
11 entirety.

12  
13 [5] The parties are DIRECTED to resume arbitration of their  
14 dispute, in California and under California law (without  
15 giving effect to California conflicts of laws principles)  
16 unless the parties mutually agree to an alternate venue or  
17 choice of law.

18  
19 [6] The stay and administrative closure previously ordered  
20 herein remain in effect. Plaintiff is DIRECTED to inform the  
21 court within fourteen (14) days of the completion of  
22 arbitration.

23 IT IS SO ORDERED.

24 DATED: December 10, 2013.

25  
26   
27 LAWRENCE K. KARLTON  
28 SENIOR JUDGE  
UNITED STATES DISTRICT COURT