



1 regard to the matters that are the subject of the appeal.” *Id.* Where “the issue of arbitrability  
2 [is] the only substantive issue presented in [an] appeal, the district court [is] not divested of  
3 jurisdiction to proceed with the case on the merits.” *Id.*

4 Defendants’ appeal in this case questions whether this Court erred “in holding that  
5 California law barred the arbitration of a private contractual dispute where injunctive relief is  
6 sought.” Appellants’ Opening Br. at 1. This appears to be identical to one of Plaintiffs’  
7 central arguments in opposition to the motion to dismiss – that California has a strong public  
8 policy barring arbitration of injunctive relief claims in consumer class actions. Although the  
9 parties have not questioned this Court’s jurisdiction over the pending motion, the Court  
10 raises this question *sua sponte* in light of the apparent identity of issues.

11 Therefore, with good cause appearing, IT IS HEREBY ORDERED that Plaintiffs and  
12 Defendants shall each file supplemental briefs, on or before **March 15, 2010**, addressing  
13 whether this Court can and should rule on Defendants’ motion to dismiss before the Ninth  
14 Circuit decides Defendants’ pending appeal. Each brief shall not exceed five pages. The  
15 parties shall be prepared to address the jurisdictional question, in addition to all other  
16 arguments related to Defendants’ motion to dismiss, at the March 29, 2010 hearing.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: 3/9/10

  
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THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT