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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 In re:

12 JAMSTER MARKETING LITIGATION,

13 This document relates to all cases.
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MDL NO. 1751

Master File: 05cv0819 JM(CAB)

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
RECONSIDER

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18 Plaintiff Baron Harmon moves to reconsider this court's November 10, 2008 Order Granting
19 T-Mobile's Motion to Compel Arbitration of Plaintiff Harmon's claims ("Order"). Defendants T-
20 Mobile USA, Inc. ("T-Mobile") and Defendants VeriSign, Inc. and Jamster LLC separately oppose
21 the motion. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral
22 argument. For the reasons set forth below, the court grants in part and denies in part the motion for
23 reconsideration.

24 In general, a motion for reconsideration under either Rule 59 or 60 is appropriate where (1)
25 the district court is presented with newly discovered evidence, (2) the district court committed clear
26 error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in
27 controlling law. School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) (citations
28 omitted), cert. denied, 114 S. Ct. 2742 (1994).

1 Plaintiff Harmon argues:

2 Rather than compelling the arbitration of Harmon's claims, the Court dismissed
3 Harmon's claims without prejudice on the grounds that (a) the Court did not have
4 authority under the Federal Arbitration Act to compel the arbitration in California of
the claims of a non-citizen of California and (b) Harmon had brought his claims in this
action in the wrong venue.

5 (Motion at p.4:13-16). Plaintiff also argues that the court erroneously dismissed his claims because
6 footnote 3 in the court's order stated that a "dismissal would not have been appropriate had the actions
7 . . . been transferred as a part of the MDL litigation. Under these circumstances, the court would have
8 transferred the action to the transferor courts." (Order at 11 n.3). Finally, Plaintiff Harmon represents
9 that he "is prepared to dismiss his claims against T-Mobile with prejudice were the Court to retain
10 Harmon and not return the action to the northern District of Illinois." (Motion at p.5:25-27)¹.

11 As a starting point, T-Mobile sought to compel arbitration of the claims of Plaintiffs Hall,
12 Chunn, Giles, and Harmon and, if granted, to stay their "actions in this MDL." (Docket No. 244; p.
13 1:25). The court granted the motion to compel arbitration but rather than stay the action, the court
14 dismissed these Plaintiffs as parties to the MDL. Plaintiff Harmon does not challenge the court's
15 conclusion that the underlying arbitration provision is enforceable under Illinois state law or that the
16 court has subject matter jurisdiction to entertain the motion to compel arbitration.² Rather, there is
17 understandable confusion regarding the procedures following the grant of a motion to compel
18 arbitration in this multi-party MDL litigation.³

20 ¹ The court notes that Plaintiff Harmon did not separately raise any arguments in opposition
21 to T-Mobile's motion to compel arbitration. Rather, Plaintiff Harmon joined in the arguments raised
22 by Plaintiffs Hall, Chunn, and Giles. (Docket No. 274). Plaintiff Harmon did not previously raise the
argument that his status as a tag along action warrants different treatment from that of Plaintiffs Hall,
Chunn, and Giles who commenced their action in this court.

23 ² This court is authorized to rule on all pretrial motions. 28 U.S.C. § 1407(b); In re Am. Cont'l
24 Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1532-33 (9th Cir.1996), rev'd on other grounds
25 sub nom. Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998) (noting that
26 "the transferee court is empowered to dispose of the cases transferred to it by means of summary
judgment or dismissal"); In re Donald J. Trump Casino Sec. Litig.-Taj Mahal Litig., 7 F.3d 357,
367-68 (3rd Cir.1993) (holding that "§ 1407 empowers transferee courts to enter a dispositive pretrial
order terminating a case").

27 ³ The court notes that the issues and concerns raised by Plaintiff Harmon do not apply to
28 Plaintiffs Hall, Chunn, and Giles because these plaintiffs originally commenced their action in this
court. (Docket No. 226). As the proper forum for arbitrating the disputes of plaintiffs Hall, Chunn,
and Giles is Maryland, Mississippi, and Illinois, respectively, the court confirms that a dismissal

1 The court notes that the venue provisions of the Federal Arbitration Act (“FAA”) identify the
2 appropriate forum for any post-arbitration award remedy. Where a party seeks to confirm an
3 arbitrator’s award, the party must bring an action in “the United States court in and for the district
4 within which such award was made.” 9 U.S.C. §9. Similarly, in the event a party seeks to vacate an
5 arbitrator’s award, the party must bring the action in “the United States court in and for the district
6 wherein the award was made.” 9 U.S.C. §10. Here, it appears that the only court with the statutory
7 authority to entertain any challenge or confirmation to the arbitrator’s award is the Northern District
8 of Illinois, the transferor court, and not the Southern District of California, as that is the district
9 encompassing the parties’ chosen forum.

10 The court notes that this court’s jurisdiction over the tag along cases like Harmon is limited
11 to the determination of pretrial matters. Upon completion of all pretrial proceedings, the matter must
12 be remanded for trial and post-trial proceedings to the transferor court. Lexecon, 523 U.S. at 39.
13 Here, by granting T-Mobile’s motion to compel arbitration, all pretrial matters involving Plaintiff
14 Harmon have now been concluded. The only remaining issue concerns the procedures to effectuate
15 the contemplated arbitration.

16 In the prototypical case, a motion to compel arbitration is filed in the district where the
17 arbitration proceeding is to be conducted. 9 U.S.C. §4. Once the motion to compel arbitration is
18 granted the court “shall on application of one of the parties stay the trial of the action until such
19 arbitration has been had in accordance with the terms of the agreement.” 9 U.S.C. §3. Here, the court
20 concludes that entry of a stay is not an appropriate remedy. The stay contemplated by the FAA
21 permits the parties to complete the arbitration and then return to the court with appropriate jurisdiction
22 to either confirm or vacate the arbitrator’s award. See 9 U.S.C. §§9, 10. However, this court does not
23 have the authority under 28 U.S.C. §1407 to entertain a post-arbitration motion to confirm or vacate
24 the award. This court’s MDL jurisdiction is limited to pretrial matters. Lexecon, 523 U.S. at 39.
25 Because this court is not a proper forum to confirm or vacate any arbitrator’s award, a stay is not an
26 appropriate remedy under the circumstances.

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without prejudice, for the reasons set forth herein and in the Order, is the appropriate remedy
following the grant of T-Mobile’s motion to compel arbitration.

1 The present action is not a prototypical case but involves the interplay of two different
2 statutory schemes, the FAA and 28 U.S.C. §1407, in the context of the complexities of multidistrict
3 litigation. Besides a stay, there appears to be only two other available procedural vehicles. First, the
4 court could refer Plaintiff Harmon's case to the Panel on Multidistrict Litigation for remand to the
5 Northern District of Illinois as all pretrial matters involving Plaintiff Harmon have been resolved. In
6 this eventuality, the Northern District of Illinois appears to have jurisdiction to entertain any FAA
7 related issued. See 9 U.S.C. §§ 3, 4, 9, 10. Alternatively, and as contemplated in the court's Order,
8 the court could dismiss Plaintiff Harmon's claims without prejudice subject to completion of any
9 arbitration proceeding conducted in the appropriate forum. Under this alternative, parties to the
10 arbitration could seek to confirm or vacate the arbitrator's award in the appropriate forum. See 9
11 U.S.C. § 3, 4, 9, 10.

12 While either a dismissal or remand appears to achieve the same result, the court reconsiders
13 its prior Order to the extent that it dismissed Plaintiff Harmon's claims. This court's multidistrict
14 jurisdiction over Harmon only extends to the conclusion of pretrial proceedings. Lexecon, 523 U.S.
15 at 35; 28 U.S.C. §1407(a). Once those pretrial proceedings are concluded, the statute provides that
16 the transferred action "shall be remanded by the panel at or before the conclusion of such pretrial
17 proceedings to the district from which it was transferred." 28 U.S.C. §1407(a). In light of the express
18 statutory language that the court "shall" remand the case upon conclusion of pretrial proceedings, the
19 court concludes that a referral to the JPML for remand is more consistent with 28 U.S.C. §1407 than
20 an outright dismissal without prejudice. Furthermore, a transfer, rather than a dismissal, would limit
21 potential prejudice to Plaintiff Harmon.

22 Finally, Plaintiff Harmon argues that he should be permitted "to dismiss his claims against T-
23 Mobile and to litigate his claims against Verisign and Jamster."⁴ (Reply at p.2:4-5). As Plaintiff fails
24 to cite any authority for the proposition that he may split or otherwise proportion his causes of action
25 against various defendants to avoid the enforcement of an agreement to arbitrate, Plaintiff fails to meet
26 his burden of demonstrating newly discovered facts, clear error, or intervening change in controlling
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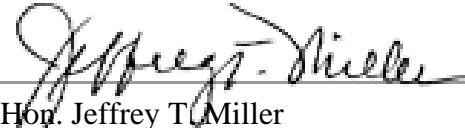
28 ⁴ The court notes that whether Plaintiff decides to voluntarily dismiss parties or claims is solely
within the discretion of Plaintiff Harmon, and not this court.

1 law. Consequently, this portion of the motion to reconsider is denied.

2 In sum, the court grants in part and denies in part Plaintiff's motion to alter or amend the
3 Order. The court grants the motion to compel arbitration and instructs the Clerk of Court to refer
4 Harmon v. VeriSign, Inc., et al., No. 06 C0926, filed on January 16, 2006 in Cook County Circuit
5 Court in Illinois and subsequently removed to the Northern District of Illinois, to the Panel on
6 Multidistrict Litigation for remand to the Northern District of Illinois.

7 **IT IS SO ORDERED.**

8 DATED: February 2, 2009

9 
10 Hon. Jeffrey T. Miller
United States District Judge

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