



1 On July 27, 2012, Indian Harbor filed a lawsuit in the Southern District of New  
2 York (“New York Federal Action”) styled Indian Harbor Insurance Company v. City  
3 of San Diego, Case No. 12 CIV 5787 (JGK). (*Hurtado Decl.* [Doc. 12] ¶ 2.)

4 On September 21, 2012, the City filed a lawsuit in the Superior Court for the  
5 County of San Diego styled City of San Diego v. Indian Harbor Insurance Company.  
6 (*Hurtado Decl.* ¶ 3.) That case was subsequently removed to this Court on October 25,  
7 2012 (“California Action”). (*Id.*)

8 On October 5, 2012, Indian Harbor filed a lawsuit in the Supreme Court of the  
9 State of New York, County of New York styled Indian Harbor Insurance Company v.  
10 City of San Diego, Index No. 157014/2012 (“New York State Action”). (*Hurtado Decl.*  
11 ¶ 4.)

12 On October 26, 2012, Indian Harbor filed a motion to enjoin the City’s  
13 prosecution of the California Action. (*Hurtado Decl.* ¶ 5.) On November 28, 2012, the  
14 Southern District Court of New York granted the motion and enjoined the City’s  
15 prosecution of the California Action (“order to enjoin”). (*Id.*) In that same order, the  
16 Southern District of New York denied the City’s motion to dismiss that case for lack of  
17 personal jurisdiction and venue. (*La Londe Decl.* [Doc. 10-2] ¶ 2, Ex. 1.)

18 After issuance of the order to enjoin, the parties agreed to stay the third-filed  
19 New York State Action. On December 19, 2012, the parties signed a stipulation to that  
20 effect. (*Hurtado Decl.* ¶ 6.) However, the parties could not come to an agreement  
21 regarding the California action. On January 14, 2013, Indian Harbor suggested that the  
22 City dismiss the California Action without prejudice. (*La Londe Decl.* ¶ 5.) The City  
23 declined to voluntarily dismiss the case and suggested that the action be stayed in a  
24 similar fashion to the New York State Action. (*Hurtado Decl.* ¶ 10.)

25  
26  
27  
28

1 Because the parties could not agree on whether to stay or dismiss the California  
2 action, Indian Harbor filed the instant motion to dismiss, or in the alternative, stay the  
3 action. (MTD [Doc. 10], Reply [Doc. 13].) The City opposes<sup>1</sup>. (Opp'n [Doc. 11].)  
4

5 **II. DISCUSSION**

6 After weighing the equities of the case, the district court may exercise its  
7 discretion to dismiss a duplicative later-filed action, to stay that action pending  
8 resolution of the previously filed action, to enjoin the parties from proceeding with it,  
9 or to consolidate both actions. Adams v. California Dept. of Health Services, 487 F.3d  
10 684, 688 (9th Cir. 2007).

11 A district court has discretionary power to stay proceedings in its own court  
12 under Landis v. North American Co., 299 U.S. 248, 254 (1936). In determining  
13 whether to grant a stay, a court should consider the possible damage that may result,  
14 the hardship or inequity that a party may suffer, and the orderly course of justice, in  
15 terms of simplifying or complicating the issues, proof, and questions of law that could  
16 result from issuing the stay. Lockyer v. Mirant Corp., 398 F.3d 1098, 1109, 1111 (9th  
17 Cir. 2005). A court can take into account the existence of similar cases pending in the  
18 same district, and the probability that more are likely to be filed. Id.

19 The only issue before the Court is whether the California Action should be  
20 dismissed without prejudice or stayed, in light of the Southern District of New York's  
21 order to enjoin the prosecution of the California Action. Indian Harbor insists dismissal  
22

---

23 <sup>1</sup> Indian Harbor suggests that its motion to dismiss should be granted because the City's  
24 opposition was filed late. (Reply 1.) Although it is true that Civil Local Rule 7.1.f.3.c allows  
25 the Court to grant a motion that is not timely opposed, the Court is not required to do so.  
26 Here, Indian Harbor has presented no evidence that the late filing of the City's opposition has  
27 prejudiced Indian Harbor in any way. Therefore, the Court, in its discretion, will consider the  
28 opposition timely filed. See Thompson v. Housing Auth. of City of Los Angeles, 782 F.2d 829  
(9th Cir. 1986) ("District courts have inherent power to control their dockets."); see also  
Hamilton Copper & Steel Corp. v. Primary Steel, 898 F.2d 1428, 1429; Fed. R. Civ. P. 1  
(" [The Federal Rules of Civil Procedure] should be construed and administered to secure the  
just, speedy, and inexpensive determination of every action and proceeding. ")

1 is appropriate, while the City urges the Court to stay the action. For the following  
2 reasons, the Court finds that a stay is the appropriate course of action here.

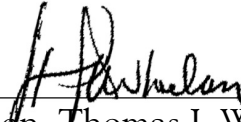
3 First, dismissal will introduce the possibility of prejudice to the parties, such as  
4 statute of limitations issues. Second, the Southern District of New York has explicitly  
5 reserved the right to lift the injunction and have the case heard in the Southern District  
6 of California. (*Hurtado Decl.* ¶ 11, Ex. 3 p. 10.). Third, the parties both agree that a  
7 stay is appropriate, even though Indian Harbor prefers that the matter be dismissed.  
8 (*MTD* 3:6-8; *Opp'n* 1:5-6.) A stay, under these circumstances, is the simplest way to  
9 effectuate the Southern District of New York's injunction while avoiding any prejudice  
10 to the parties. After all, although it may not be likely that this Court will ultimately  
11 host the substantive litigation of this dispute, and prejudice may not result from  
12 dismissal, "why take chances?" See *Asset Allocation & Mgt. v. Western Employers*  
13 *Ins.*, 892 F.2d 566, 571 (7th Cir. 1989).

14  
15 **III. CONCLUSION**

16 In light of the foregoing, the Court **GRANTS IN PART** the motion and orders  
17 this civil action **STAYED** in light of the Southern District of New York's order to  
18 enjoin the prosecution of this matter. The Court **FURTHER ORDERS** the parties to  
19 jointly report to the Court on the status of the New York Federal Action by October  
20 1, 2013.

21 **IT IS SO ORDERED.**

22  
23 DATED: July 25, 2013

24  
25   
26 \_\_\_\_\_  
27 Hon. Thomas J. Whelan  
28 United States District Judge