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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SERGIO GAVALDON, et al.,

Plaintiffs,

vs.

STANCHART SECURITIES  
INTERNATIONAL, INC., et al.,

Defendants.

CASE NO. 12cv3016-LAB (MDD)

**ORDER DENYING CROSS-  
MOTIONS FOR  
RECONSIDERATION;**

**ORDER DENYING IN PART AND  
GRANTING IN PART *EX PARTE*  
APPLICATION; AND**

**ORDER TO SHOW CAUSE RE:  
CONFIRMATION OF  
ARBITRATION "AWARD"**

[Docket numbers 15, 16, 17.]

In an earlier related case, *Stanchart Securities Int'l, et al. v. Gavaldon, et al.*, 12cv3016-LAB (MDD), Stanchart asked the Court to enjoin an ongoing arbitration. After the Court denied the request and dismissed that action, arbitration was completed. Plaintiffs then filed their complaint, asking for vacatur of a FINRA arbitration panel's decision. Defendants filed their response, which included a cross-complaint, styled as a cross-petition, seeking confirmation of the FINRA panel's decision. Plaintiffs then moved for summary judgment.

The Court denied summary judgment, and as part of its order, required Plaintiffs to explain whether all issues in the complaint had been adjudicated:

1           Because this appears to dispose of the claims raised in the complaint,  
2           Plaintiffs are **ORDERED TO SHOW CAUSE** why this action should not be  
3           dismissed. . . . The Court is **not** inviting a motion for reconsideration. See  
          Standing Order, ¶ 4(j). If Plaintiffs fail to show cause within the time  
          permitted, the complaint will be dismissed without leave to amend.

4           Plaintiffs filed a document styled as a response to the Court's order, which was in fact  
5           an unauthorized motion for reconsideration. Defendants, without requesting or obtaining  
6           leave, filed a reply to the response. They apparently assumed Plaintiffs' request for  
7           reconsideration had been granted, and also requested reconsideration. Defendants then filed  
8           another motion (Docket no. 17), *ex parte*, arguing that the Court committed clear error and  
9           urging a ruling in their favor, and requesting attorney's fees. Because the first two motions  
10          were filed without leave and in violation of the Court's orders, see Standing Order, ¶ 4(j), the  
11          two motions for reconsideration are summarily **DENIED**. See Civil Local R. 83.1(a)  
12          (authorizing sanctions for violation of any order of the court). From the Plaintiffs' non-  
13          responsiveness to its order requiring them to show whether any other matters remained for  
14          litigation, the Court infers that all underlying claims have been addressed, and all that  
15          remains to do in this case is to adjudicate the counter claim and dismiss the case.

16          Because the parties apparently both misunderstand the order denying summary  
17          judgment, the Court considers it appropriate to explain that order, briefly, and why it found  
18          their arguments unpersuasive. The reasoning from the earlier order is incorporated by  
19          reference into this order.

20          The Financial Industry Regulatory Authority (FINRA) issued the arbitration award,  
21          which amounted to a determination that FINRA was not the right forum for arbitration and  
22          that Plaintiffs were not "customers" within the meaning of FINRA rules. While it is called an  
23          "Award," in this respect it does not actually award anything. Except for its determination that  
24          Plaintiffs were not customers within the meaning of FINRA rules, it is not a decision on the  
25          merits at all. Plaintiffs have apparently never sought either to litigate their claims in court or  
26          to arbitrate their claims in another forum that might be proper. Rather, they have asked the  
27          Court to advise them which forum would be proper before they try to arbitrate again. They  
28          have suggested that the American Arbitration Association is the proper forum, but want the

1 Court to confirm that for them before they try again. Even if the Court were to make such a  
2 determination, it would not bind the American Arbitration Association, which is not a party to  
3 this action. That organization could, as FINRA did, determine that it lacked authority to  
4 arbitrate the claims, and nothing this Court says in this case would require it to render a  
5 decision on the merits. Plaintiffs may also be asking the Court to clarify whether they or the  
6 two shell entities through which they did business are proper plaintiffs in some future  
7 arbitration. But that too is a question for the arbitrators. The decision Plaintiffs ask for would  
8 in effect be an advisory opinion, which federal courts lack the power to issue. *See Flast v.*  
9 *Cohen*, 392 U.S. 83, 96 n.14 (1968). In other words, this is not an issue that remains to be  
10 litigated.

11 Ordinarily in a case like this, the parties would talk with each other and attempt to  
12 agree upon a forum in which the claims could be litigated or arbitrated, to avoid wasting time  
13 and money. Given the contentious character of this litigation it is unclear whether this is  
14 likely. But if that does not happen, Plaintiffs must choose their forum and, if challenged,  
15 defend their choice. They might, for example, decide to seek arbitration before a panel of the  
16 American Arbitration Association. It would be up to the arbitrators, not this Court, whether  
17 the claims are decided on the merits or whether they are disposed of on procedural grounds.  
18 They might also seek to litigate their claims, in which case it would be up to Defendants to  
19 determine whether to seek an order compelling arbitration in a particular forum.

20 Importantly, the "Award" said nothing about the merits of Plaintiffs' claims; its only  
21 determination appears to be that FINRA arbitration was unavailable to the Plaintiffs. In spite  
22 of Defendants' emphasis on the need for finality, the "Award" does not appear to dispose of  
23 Plaintiffs' claims. Although confirmation of this "Award" would appear to benefit Defendants  
24 little, their counterclaim requested that it be confirmed. Plaintiffs have not answered the  
25 counterclaim, however, possibly because they did not recognize it as a counterclaim — it  
26 was styled a "Preliminary Response." It appears to be several pleadings joined into one, see  
27 Fed. R. Civ. P. 7(a), but in any case it is not a motion. Defendants have not done anything

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1 to affirmatively prosecute their counterclaim or cross-petition, other than filing their *ex parte*  
2 motion.

3 To the extent Defendants have argued that the Court is obligated, *sua sponte*, to  
4 adjudicate their pleading, they are in error. Like other litigants, parties seeking confirmation  
5 of arbitration awards are not permitted merely to file a pleading and wait. Rather,  
6 applications to confirm arbitration awards are made by motion. 9 U.S.C. § 6; *IFC*  
7 *Interconsult, AG v. Safeguard Int'l Partners, LLC*, 438 F.3d 298, 308–09 (3d Cir. 2006)  
8 (noting the FAA's procedural requirement that litigants proceed by motion, not pleading); see  
9 also Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by motion.") See also  
10 *Kruse v. Sand Bros. & Co., Ltd.*, 226 F. Supp. 2d 484, 487 (S.D.N.Y. 2002) (explaining that  
11 "[w]hen presented with a *motion* to confirm," the court must grant it unless the award is  
12 vacated, modified, or corrected) (emphasis added). Defendants could have filed a cross-  
13 motion to Plaintiffs' motion to vacate, or, following denial of the motion to vacate, a motion  
14 to confirm.

15 The *ex parte* motion (Docket no. 17) is a hybrid. It argues the Court should have  
16 entered an order confirming the arbitration "Award," and seeks reconsideration of various  
17 matters. While it doesn't actually amount to a motion for confirmation of the "Award," it is  
18 apparent that is what Defendants want. No later than **14 calendar days from the date this**  
19 **order is entered**, Plaintiffs may file a response showing why the "Award" should not be  
20 confirmed. Their response must not exceed five pages. The Court is **not** inviting any more  
21 requests for reconsideration, and Plaintiffs must not include any such requests in any  
22 response they file. If they do, their response may be stricken. If Plaintiffs fail to show why the  
23 "Award" should not be confirmed, or if they do not file a response, it will be confirmed.

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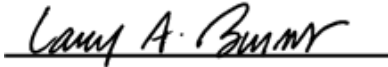
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In all other respects, Defendants' *ex parte* motion (Docket no. 17) is **DENIED** and the Clerk is directed to terminate it.

**IT IS SO ORDERED.**

DATED: September 8, 2015



**HONORABLE LARRY ALAN BURNS**  
United States District Judge