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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 HANDAL & ASSOCIATES, INC.,  
12 Plaintiff,  
13 v.  
14 JONATHAN BRUCE SANDLER  
15 (A.K.A. JONTY SANDLER),  
16 Defendant.

Case No.: 3:18-cv-00169-L-AGS

**ORDER DENYING DEFENDANT'S  
MOTION TO STAY**

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18 Pending before the Court is Defendant Jonathan Bruce Sandler's ("Sandler")  
19 motion to stay this action pending the resolution of another action pending in state court.  
20 Plaintiff Handal & Associates, Inc. ("Handal") opposed, and Sandler replied. The Court  
21 decides this matter on the briefs without oral argument. *See* Civ. L. R. 7.1.d.1. For the  
22 reasons stated below, Defendant's motion is denied.

23 According to the operative First Amended Complaint, Handal entered into a  
24 written retainer agreement. (First Am. Compl. (doc. no. 10, "FAC"); FAC Ex. A (doc.  
25 no. 10-1, "Agreement")). The purpose of the Agreement was to represent several clients  
26 as "Plaintiffs in the African Wireless, Inc., Derivative Action" ("Derivative Action").

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1 (Agreement at 2;<sup>1</sup> *see also* FAC ¶¶ 1, 6.) Among other things, the Agreement provides  
2 for a 15% contingency fee of up to \$5 million. (Agreement at 3.) Handal claims it  
3 litigated the Derivative Action to judgment that exceeded \$93 million and contends this  
4 entitles it to the maximum fee of \$5 million. (FAC ¶ 9.)

5 Sandler was a representative of one of Handal's clients, Wymont Services, Ltd.  
6 ("Wymont"). (Agreement at 2, 7.) Handal claims that Sandler, acting for his personal  
7 financial gain, falsely told Handal's clients that Handal was negligent and committed  
8 malpractice in the Derivative Action. (FAC ¶ 10.) Sandler allegedly offered to assist  
9 Handal's clients to avoid paying Handal in exchange for a percentage of the money they  
10 would save. (*Id.* ¶11.) Specifically, Sandler told the clients that by suing Handal for  
11 malpractice, he "would get [Handal's] malpractice carrier to pay an amount to offset the  
12 fees owed to [Handal]." (*Id.*)

13 Handal alleges that based on Sandler's statements the clients refused to pay the \$5  
14 million contingency fee. (*Id.* ¶ 13). On May 17, 2017, the clients filed a malpractice  
15 action against Handal, *Wymont Servs. Ltd. et al. v. Handal & Assocs. et al.*, Cal. Super.  
16 Ct., Orange County case no. 30-217-00920613 ("Malpractice Action"). (Def.'s Req. for  
17 Judicial Notice Ex. D (doc. no. 12-4, "Def.'s Ex. D") at 2.) Handal filed a cross-  
18 complaint against them alleging breach of contract and anticipatory breach. (*Id.* at 4; *see*  
19 *also* Mtn to Stay (doc. no. 23-1) at 3-4.) In addition, Handal filed this action for  
20 intentional interference with contract, intentional interference with prospective economic  
21 advantage, and defamation against Sandler, who is not a party to the Malpractice Action.  
22 On January 18, 2019, the California Court of Appeal affirmed the judgment in the  
23 Derivative Action. (Doc. no. 18-1.) The Malpractice Action was stayed during the  
24 appeal of the Derivative Action and is now set for trial in December 2019. (Mtn to Stay  
25 at 2-3, 4.)

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28 <sup>1</sup> All page references are assigned by the Electronic Case Management System.

1 Sandler moves to stay this action pending the conclusion of the Malpractice Action  
2 pending in state court, arguing that a stay will prevent inconsistent rulings and conserve  
3 resources. He invokes both, the first-to-file rule (Reply (doc. no. 29) at 6), and the  
4 Court's discretionary power to control its docket (Mtn to Stay at 4-5). Neither argument  
5 is persuasive.

6 In the area of concurrent state and federal actions, as a general rule, "federal courts  
7 lack the authority to abstain from the exercise of jurisdiction that has been conferred."  
8 *New Orleans Public Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 358  
9 (1989). "[T]he courts of the United States are bound to proceed to judgment and to  
10 afford redress to suitors before them in every case to which their jurisdiction extends."  
11 *Id.* (internal quotation marks and citation omitted, brackets in original). Sandler does not  
12 question that the pending case falls within federal jurisdiction.

13 The first-to-file rule is "a judicially created doctrine of federal comity, which  
14 applies when two cases involving substantially similar issues and parties have been filed  
15 in different districts." *In re Bozic*, 888 F.3d 1048, 1051 (9<sup>th</sup> Cir. 2018) (internal quotation  
16 marks and citations omitted). The doctrine applies to concurrent federal actions and is  
17 therefore not applicable here. Moreover, the pending action and the Malpractice Action  
18 involve different parties and different legal claims. Even if the actions were concurrently  
19 pending in federal courts, the doctrine would not apply.

20 Alternatively, Sandler requests a stay under the Court's inherent power to "control  
21 the disposition of the causes on its docket with economy of time and effort for itself, for  
22 counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In this  
23 regard, the movant

24 must make out a clear case of hardship or inequity in being required to go  
25 forward, if there is even a fair possibility that the stay for which he prays will  
26 work damage to someone else. Only in rare circumstances will a litigant in  
27 one cause be compelled to stand aside while a litigant in another settles the  
28 rule of law that will define the rights of both.

1 *Id.* at 255. Even where the other action in all likelihood will settle many issues of law or  
2 fact and simplify the action sought to be stayed, the "burden of making out the justice and  
3 wisdom of a departure from the beaten track lay[s] heavily on the . . . suppliants for  
4 relief, and discretion [is] abused if the stay [is] not kept within the bounds of  
5 moderation." *Id.* at 256. Accordingly, to warrant a stay of even modest duration, the  
6 moving party must "make out a clear case of hardship or inequity." *Id.* at 255.

7 Handal claims it would be prejudiced by a stay, even a stay of short duration,  
8 because of potential loss of evidence, including the fact that one of the witnesses it wants  
9 to depose is elderly and in poor health. (Opp'n (doc. no. 28) at 12.) Accordingly, to  
10 warrant a stay of any length, Sandler must show a clear case of hardship or inequity.  
11 Sandler claims he will be prejudiced if this action proceeds because of the overlap  
12 between the actions, which will force him to duplicate his efforts in discovery and may  
13 result in conflicting rulings.

14 Sandler overstates the extent of the overlap between this action and the  
15 Malpractice Action. He is not a party in the Malpractice Action, and the claims alleged  
16 are different. There is some overlap between Handal's former clients' malpractice claim  
17 against Handal and Handal's claim for defamation against Sandler. Handal's defamation  
18 claim will require proof that Sandler's statement that Handal committed malpractice was  
19 false. Whether Handal committed malpractice is an issue in the Malpractice Action.  
20 However, Handal's claims for intentional interference with contract and intentional  
21 interference with prospective economic advantage against Sandler are not presented in  
22 the Malpractice Action.

23 Overlap in the legal and factual issues regarding malpractice does not mandate a  
24 stay in the absence of a clear case of hardship or inequity. *See Landis*, 299 U.S. at 255.  
25 In this regard, Sandler points to the potential overlap in discovery. That discovery in  
26 both actions may cover some of the same information is not a sufficient ground to stay

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1 this action. Sandler presents no reason why discovery obtained in one action could not be  
2 used in the other to avoid duplication.

3 For the foregoing reasons, Sandler's motion to stay is denied.

4 **IT IS SO ORDERED.**

5 Dated: September 17, 2019

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7 Hon. M. James Lorenz  
8 United States District Judge

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