

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV-16-01273-MWF-MRWx**

**Date: August 4, 2016**

**Title: Christopher Sophinos -v- Quadriga Worldwide Ltd. et al.**

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**Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge**

Deputy Clerk:  
Ingrid Valdes

Court Reporter:  
Not Reported

Attorneys Present for Plaintiff:  
None Present

Attorneys Present for Defendant:  
None Present

**Proceedings (In Chambers): ORDER DENYING PLAINTIFF’S EX PARTE APPLICATION TO LIFT STAY [21]**

Before the Court is Plaintiff’s Ex Parte Application to Lift Stay (the “Application”), to which Defendant filed an Opposition. (Docket Nos. 21–22). The Court has reviewed and considered the papers on the Application, and for the reasons set forth below, the Application is **DENIED**.

On April 27, 2016, the Court granted Defendant’s Motion to Compel Arbitration. (Docket No. 18). Plaintiff now requests that the Court lift the stay and restore this action to the Court’s active docket. (Application at 1). According to Plaintiff, the arbitration has “terminated” because Defendant refused to pay the American Arbitration Association (“AAA”) filing fees. (*Id.* at 1–3).

It is true that failure to pay arbitration fees may constitute default. *Sink v. Aden Enterprises, Inc.*, 352 F.3d 1197, 1199–200 (9th Cir. 2003) (moving party’s “failure to pay required costs of arbitration was a material breach of its obligations in connection with the arbitration” such that the moving party could not compel the court to return the case to arbitration later).

But this does not resolve the parties’ fundamental disagreement over—as well as the threshold question of—whether Plaintiff or Defendant should shoulder the obligation to pay the filing fee.

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Under the governing Employment Dispute Resolution Rules of the AAA, administrative fees “are to be paid by the party bringing the claim or counterclaim at the time the demand or claim is filed with the AAA.” (Declaration of Timothy M. Rusche in Support of Opposition Ex. D (Docket No. 22-1)). At least one district court interpreting a similar provision of the Commercial Arbitration Rules and Mediation Procedures of the AAA has held that the plaintiff, as the party initiating the civil action, bears the burden of paying the initial administrative fees. *Briggs v. Nationstar Mortgage, LLC*, No. 3:15-CV-24, 2016 WL 2644902, at \*3 (N.D.W. Va. May 9, 2016) (“The Rule states that ‘[t]he filing fee shall be advanced by the party or parties making a claim or counterclaim.’ The drafters of this Rule could have stated that the filing fee must be advanced by the party demanding arbitration, or by the party exercising his right to arbitration under an enforceable arbitration agreement. Instead, the drafters specifically chose to place this burden on ‘the party or parties making a claim or counterclaim,’ and the words ‘claim’ and ‘counterclaim’ have special meaning in the context of litigation. Such words, as applied in this case, point to the Plaintiff.”).

The Court does not reach this issue, however, because the responsibility of interpreting the AAA rules is appropriately addressed to the arbitrator, not this Court. *See Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012–13 (9th Cir. 2004) (reversing district court’s order compelling Lifescan to pay its pro-rata share of arbitration fees when “[t]he arbitrators [had already] exercised their discretion . . . by allowing the arbitration to proceed on the condition that Lifescan advance the remaining fees”); *Dealer Computer Servs., Inc. v. Old Colony Motors, Inc.*, 588 F.3d 884, 887 (5th Cir. 2009) (reversing district court’s order compelling a party to pay an AAA deposit because “[p]ayment of fees is a procedural condition precedent that the trial court should not review”); *Union Cent. Life Ins. Co. v. Andraos*, No. 1:09-CV-758, 2011 WL 6091771, at \*5 (S.D. Ohio Oct. 21, 2011), *report and recommendation adopted*, No. C-1-09-758, 2011 WL 6100275 (S.D. Ohio Dec. 7, 2011) (“[P]laintiff’s argument that the parties’ non-payment of arbitration fees equates to a waiver of arbitration is a procedural issue which should be determined by the arbitrator. The payment of arbitration fees is a condition precedent to arbitration, similar to the required submission of documents and abiding by time limits, which are considered

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procedural issues to be decided by an arbitrator.”); *but see Sink v. Aden Enters., Inc.*, 352 F.3d 1197 (9th Cir. 2003) (affirming district court’s finding that the defendant was in default for nonpayment of fees *after* arbitrator had made specific default determination).

Whether Defendant was obligated to pay the filing fees, and, if so, whether Defendant’s nonpayment amounted to default or waiver should be decided by the arbitrator, and not this Court. Accordingly, the Application is **DENIED**.

IT IS SO ORDERED.