

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

APR 14 2011

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JERALYN SMITH,

Plaintiff - Appellant,

v.

MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY, a  
Massachusetts corporation; THE  
DENVER O-KEEFE AGENCY, a  
business of unknown form,

Defendants - Appellees,

and

WILLIAM J. BROWN, an individual,

Defendant.

No. 10-56001

D.C. No. 2:09-cv-06765-MMM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Margaret M. Morrow, District Judge, Presiding

Argued and Submitted December 8, 2010  
Pasadena, California

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: PREGERSON, CLIFTON, and M. SMITH, Circuit Judges.

Jeralyn Smith appeals the district court's order compelling arbitration and denying her motion for a preliminary injunction. As the facts and procedural history are familiar to the parties, we do not recite them here except as necessary to explain our disposition.

We may affirm the denial of a preliminary injunction “on any ground supported by the record.” *Big Country Foods, Inc. v. Bd. of Educ.*, 868 F.2d 1085, 1088 (9th Cir. 1989). Because Smith failed to make a “clear showing” “that [s]he is likely to suffer irreparable harm in the absence of preliminary relief,” *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374, 376 (2008), the district court properly denied her motion.

We lack jurisdiction over Smith's appeal of the order compelling arbitration. *See* 9 U.S.C. § 16(b)(2). We decline to exercise our “narrow[]” pendent jurisdiction over the arbitration order. *Cunningham v. Gates*, 229 F.3d 1271, 1284 (9th Cir. 2000). “Two issues are not ‘inextricably intertwined’ if we must apply different legal standards to each,” *id.* at 1285, and our “review of the [arbitration] decision” is not “necessary to ensure meaningful review of the” injunction decision, *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 51 (1995). Accordingly,

the appeal of the district court's order compelling arbitration is dismissed. Costs are awarded to Defendants-Appellees.

**AFFIRMED IN PART; DISMISSED IN PART.**