

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 27 2014

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

KENT PIVONKA; JAMES SMITH,

Plaintiffs - Appellants,

v.

ALLSTATE INSURANCE COMPANY,  
an Illinois corporation; ALLSTATE  
PROPERTY AND CASUALTY  
COMPANY, an Illinois corporation,

Defendants - Appellees.

No. 12-15068

D.C. No. 2:11-cv-01759-GEB-  
CKD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Garland E. Burrell, Jr., Senior District Judge, Presiding

Submitted February 12, 2014\*\*  
San Francisco, 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.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: O'SCANNLAIN and MURGUIA, Circuit Judges, and ADELMAN,  
District Judge.\*\*\*

Kent Pivonka appeals the district court's order granting Allstate Insurance Company's motion to compel appraisal and stay litigation of his putative class action.

Appraisal is a form of arbitration under California law. *See, e.g., Doan v. State Farm Gen. Ins. Co.*, 125 Cal. Rptr. 3d 793, 801 (Cal. Ct. App. 2011). We therefore lack jurisdiction to consider this appeal. *See* 9 U.S.C. § 16(b); *Dees v. Billy*, 394 F.3d 1290, 1294 (9th Cir. 2005) ("We therefore hold that a district court order staying judicial proceedings and compelling arbitration is not appealable[.]").<sup>1</sup>

**DISMISSED.**

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\*\*\* The Honorable Lynn S. Adelman, District Judge for the U.S. District Court for the Eastern District of Wisconsin, sitting by designation.

<sup>1</sup> Pivonka's motion to take judicial notice of court records, filed with this Court on January 16, 2014, is **DENIED** as moot.