

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court  
Central District of California**

GCIU-EMPLOYER RETIREMENT  
FUND,

Plaintiff,

v.

QUAD/GRAPHICS, INC.,

Defendant.

Case No.: 2:16-cv-03391-ODW-AFM  
[Lead Case]

**ORDER CONSOLIDATING CASES**

QUAD/GRAPHICS, INC.,

Plaintiff,

v.

GCIU-EMPLOYER RETIREMENT  
FUND,

Defendant.

Case No.: 2:16-cv-03418-ODW-AFM

**I. INTRODUCTION**

On May 17, 2016, Plaintiff GCIU-Employer Retirement Fund (“GCIU”) filed an action against Defendant Quad/Graphics, Inc. (“Quad”) pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) to enforce in part and vacate or modify in part an arbitration award issued under section 4221(a)(1) of ERISA, 29 U.S.C. § 1401(a)(1). (Compl. ¶¶ 11, 19–32, 36–37, *GCIU-Employer Retirement Fund v. Quad/Graphics, Inc.*, Case No. 2:16-cv-03391 (C.D. Cal. May 17, 2016), ECF No. 1 (hereinafter “*GCIU Compl.*”).) The next day, Quad filed a separate action against GCIU to enforce in part and vacate or modify in part the same arbitration award.

1 (Compl., *Quad/Graphics, Inc. v. GCIU-Employer Retirement Fund*, Case No. 2:16-  
2 CV-3418 (C.D. Cal. May 18, 2016), ECF No. 1 (hereinafter “*Quad Compl.*”).)

3 For the reasons discussed below, the Court hereby **CONSOLIDATES** the  
4 following two cases: (1) *GCIU-Employer Retirement Fund v. Quad/Graphics, Inc.*,  
5 Case No. 2:16-cv-03391 – **LEAD CASE**; and (2) *Quad/Graphics, Inc. v. GCIU-*  
6 *Employer Retirement Fund*, Case No. 2:16-cv-03418.<sup>1</sup>

## 7 II. FACTUAL BACKGROUND

8 GCIU is a multiemployer pension plan with its administrative offices located in  
9 California. (*GCIU Compl.* ¶ 4.) Quad is a commercial printing business with its  
10 principal place of business and headquarters in Wisconsin. (*Id.* ¶ 5.) In July 2010,  
11 Quad acquired Quebecor World (USA), Inc. (“Quebecor”), and was thus obligated to  
12 make contributions to GCIU under various collective bargaining agreements  
13 (“CBAs”) that Quebecor previously entered into with its employees, including at its  
14 facility in Versailles, Kentucky. (*Id.* ¶ 6.) In December 2010, however, Quad’s  
15 employees at the Versailles facility voted to decertify the union representatives that  
16 negotiated the CBA with Quebecor, and the election was certified by the National  
17 Labor Relations Board later that month. (*Id.* ¶ 7.) As a result, Quad notified GCIU  
18 that it planned to cease making contributions to GCIU for all of its facilities, including  
19 the Versailles facility. (*Id.* ¶ 8.) On February 1, 2013, GCIU sent Quad a notice of  
20 partial withdrawal liability for 2010, and a notice of complete withdrawal liability for  
21 2011, for the Versailles facility pursuant to section 4219 of ERISA, 29 U.S.C. § 1399.  
22 (*Id.* ¶ 9.) In those notices, GCIU laid out a monthly payment schedule for Quad for  
23 both the 2010 partial withdrawal and the 2011 complete withdrawal. (*Id.*) Under the  
24 payment schedule, Quad was required to pay \$321,151.22 per month for twenty years  
25 (\$93,194,558 total) on the 2010 partial withdrawal, and \$351,501.80 per month for  
26 eight and a half years (\$27,368,656 total) on the 2011 complete withdrawal. (*Id.*)

---

27 <sup>1</sup> After considering the allegations in the Complaints in each case, the Court deems the matter  
28 appropriate for *sua sponte* decision. *In re Adams Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987).

1 Quad disputed both assessments, and filed a demand for arbitration pursuant to  
2 ERISA with the American Arbitration Association to contest the payments. (*Id.* ¶ 10;  
3 *Quad* Compl. ¶ 11.) On May 18, 2015, the arbitrator issued an interim award on the  
4 issue of the 2010 partial withdrawal. The arbitrator determined that GCIU had erred  
5 in finding that Quad had partially withdrawn in 2010, and thus that GCIU was not  
6 liable for the 2010 partial withdrawal assessment. (*GCIU* Compl. ¶ 13.) Specifically,  
7 the arbitrator reasoned that because the Versailles CBA did not require Quad to make  
8 contributions until 2011, Quad did not actually withdraw from the fund until it failed  
9 to make those contributions in 2011, even though Quad’s employees elected to  
10 decertify its union representatives in 2010. (*Quad* Compl. ¶ 17, Ex. 2.) GCIU refers  
11 to the rule that the arbitrator used in making this determination as the “vacation  
12 deferral rule.” (*GCIU* Compl. ¶ 19.) After the arbitrator issued the interim award,  
13 Quad stopped making payments on the 2010 partial withdrawal assessment. (*Id.*  
14 ¶ 14.) On December 17, 2015, the arbitrator issued an amended interim award, in  
15 which he found that GCIU had properly calculated the 2011 complete withdrawal  
16 assessment. (*Quad* Compl. ¶ 15.) On May 17, 2016, the arbitrator issued a final  
17 award, in which he confirmed his prior decisions regarding both the 2010 and 2011  
18 withdrawal assessments. (*GCIU* Compl. ¶ 17, Ex. 1.) The arbitrator also declined to  
19 award attorneys’ fees to either party under 29 C.F.R. § 4221.10(c), which permits such  
20 an award where the opposing party engages in dilatory, harassing, or other improper  
21 conduct during the course of the arbitration proceedings. (*Id.* ¶¶ 34–35, Ex. 2 at 56.)

22 Both parties immediately filed Complaints with this Court pursuant to the  
23 Multiemployer Pension Plans Amendments Act, which provides that any party  
24 arbitrating withdrawal liability under ERISA “may bring an action, no later than 30  
25 days after the issuance of the arbitrator’s award, in an appropriate United States  
26 district court in accordance with section 1451 of this title to enforce, vacate, or modify  
27 the arbitrator’s award.” 29 U.S.C. § 1401(b)(2).

28

1 In its Complaint filed on May 17, 2016, GCIU requests that this Court vacate or  
2 modify portions of the arbitrator's final award that used the vacation deferral rule in  
3 determining that Quad did not partially withdraw in 2010. (*GCIU* Compl. ¶¶ 19–24.)  
4 GCIU also requests that this Court vacate the arbitrator's decision denying an award  
5 of attorney's fees under 29 C.F.R. § 4221.10(c). (*Id.* ¶¶ 34–35, Ex. 2 at 56.) Further,  
6 GCIU requests that this Court affirm and enforce the arbitrator's ruling regarding the  
7 2011 complete withdrawal assessment. (*Id.* ¶¶ 36–37.)

8 Conversely, in its Complaint, filed on May 18, 2016, Quad requests that this  
9 Court enforce the arbitrator's interim award finding that Quad did not partially  
10 withdraw in 2010, but that the Court vacate or modify the determination that GCIU  
11 correctly calculated the 2011 complete withdrawal liability assessment. (*Quad*  
12 Compl. ¶¶ 20-21.) Additionally, like GCIU, Quad requests an award of attorney's  
13 fees and arbitration expenses under 29 C.F.R. § 4221.10(c). (*Id.* ¶ 22, Ex. 2 at 55.)  
14 On June 14, 2016, the Court informed the parties that it intended to consolidate the  
15 cases, and that any party opposing consolidation should file a brief no later than June  
16 21, 2016. (*GCIU* Action, ECF No. 16.) The Court did not receive any timely  
17 responses from either party. Thus, the Court hereby issues this Order consolidating  
18 the two cases.

### 19 III. LEGAL STANDARD

20 A district court has broad discretion to consolidate cases that involve a common  
21 question of law or fact. Fed. R. Civ. P. 42(a)(2); *Inv'rs Research Co. v. U.S. Dist. Ct.*  
22 *for the Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). “To determine whether  
23 to consolidate, a court weighs the interest of judicial convenience against the potential  
24 for delay, confusion and prejudice caused by consolidation.” *Sw. Marine, Inc. v.*  
25 *Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 807 (N.D. Cal. 1989). While  
26 consolidation is generally favored, *Perez–Funez v. Dist. Dir., I.N.S.*, 611 F. Supp.  
27 990, 994 (C.D. Cal. 1984), “consolidation may be inappropriate where individual  
28 issues predominate.” *In re Consol. Parlodel Litig.*, 182 F.R.D. 441, 447 (D.N.J.

1 1998). The decision whether to consolidate cases is within the district court's  
2 discretion. *Pierce v. Cty. of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008); *Inv'rs*  
3 *Research Co.*, 877 F.2d at 777.

#### 4 IV. DISCUSSION

5 Here, both actions present common questions of law and fact. Although each  
6 party requests that the Court vacate, modify, or enforce different portions of the  
7 arbitrator's award, both actions ultimately stem from the same arbitration proceeding.  
8 (*Quad* Compl. at 6; *GCIU* Compl. at 12.) Furthermore, the dispute giving rise to the  
9 arbitration proceeding itself arises from common questions of law and fact concerning  
10 Quad's alleged liability for withdrawing from the fund. (*Quad* Compl. ¶ 8–9; *GCIU*  
11 Compl. ¶ 9.) That is, the gravamen of each action is that the arbitrator incorrectly  
12 decided the 2010 and 2011 withdrawal liability issues based on an incorrect reading of  
13 the relevant CBA. As a result, pretrial issues and motion practice in both actions will  
14 substantially overlap. Thus, consolidation of these actions would serve the interests of  
15 efficiency by conserving costs and judicial resources. *See Backe v. Novatel Wireless,*  
16 *Inc.*, No. 08-CV-01689-H (RBB), 2008 WL 5214262, at \*2 (S.D. Cal. Dec. 10, 2008)  
17 (finding consolidation appropriate because “the related actions are based on the same  
18 facts and involve the same subject matter, the same discovery will be relevant to both  
19 lawsuits.”).

20 Moreover, factors that would weigh against consolidation, such as prejudice or  
21 confusion, are not present here. *See Lewis v. City of Fresno*, No. CV-F-08-1062  
22 OWW/GSA, 2009 WL 1948918, at \*1 (E.D. Cal. July 6, 2009) (holding when  
23 exercising discretion on consolidation, a court must consider “whether the specific  
24 risks of prejudice and . . . confusion [are] overcome by the risk of inconsistent  
25 adjudications of common factual and legal issues, the burden on parties . . . available  
26 judicial resources . . . the length of time required to conclude multiple suits [as  
27 opposed to one]”). Here, both actions were filed within one day of each other. (*Quad*  
28 Compl.; *GCIU* Compl.) Thus, the risk of prejudice due to cases being at different

1 stages of litigation is virtually non-existent. *Dusky v. Bellasaire Investments*, No.  
2 SACV07-874DOC, 2007 WL 4403985, at \*3 (C.D. Cal. Dec. 4, 2007) (holding there  
3 was minimal risk of prejudice due to cases being at different stages of preparation  
4 when each of the cases to be consolidated “arose within a four-month period”).  
5 Furthermore, there is little risk of confusion in consolidating the cases. Both cases  
6 involve only the same two parties, and involve only the single issue of whether the  
7 arbitrator’s decision was correct. (*Quad* Compl.; *GCIU* Compl.)

8 Finally, neither party has objected to consolidation, despite being given the  
9 opportunity to do so. (*See* Order, *GCIU-Emp. Ret. Fund*, Case No. 2:16-cv-03391  
10 (C.D. Cal. June 14, 2016), ECF No. 16.)

11 **V. CONCLUSION**

12 For the reasons discussed above, the Court hereby **CONSOLIDATES** the  
13 following two cases:

- 14
- 15 (1) *GCIU-Employer Retirement Fund v. Quad/Graphics, Inc.*, Case No.  
16 2:16-cv-03391 – **LEAD CASE**;
  - 17 (2) *Quad/Graphics, Inc. v. GCIU-Employer Retirement Fund*, Case No.  
18 2:16-cv-03418;
- 19

20 All documents concerning either action should be filed in the **LEAD CASE**  
21 only.

22 **IT IS SO ORDERED.**

23 August 16, 2016

24  
25   
26 \_\_\_\_\_  
27 **OTIS D. WRIGHT, II**  
28 **UNITED STATES DISTRICT JUDGE**