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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IRA GROSSMAN, on behalf of himself  
and all other similarly situated,

Plaintiff,

v.

AMERICAN PSYCHOLOGICAL  
ASSOCIATION and AMERICAN  
PSYCHOLOGICAL ASSOCIATION  
PRACTICE ORGANIZATION,

Defendants.

Civil No. 13cv736 L (JMA)

**ORDER GRANTING MOTION TO  
TRANSFER VENUE [doc. #14]**

**A. Background**

In October and November 2010, plaintiff Ira Grossman’s counsel filed two putative class actions in the United States District Court for the District of Columbia, which alleged that the American Psychological Association’s (“APA”) dues statements required payment of a practice assessment fee for a different organization – the American Psychological Association Practice Organization (“APAPO”), a lobbying arm of the APA – as a condition of APA membership. The two actions were consolidated on January 31, 2011, and plaintiffs were given leave to file a consolidated complaint. *See In re: APA Assessment Fee Litig.*, 10-cv-1780-JDB.

The district court dismissed all counts of the fourth amended complaint without prejudice 862 F. Supp.2d 1, 11 (D.D.C. 2012)(“even if plaintiffs may be able to bring a viable claim based

1 on defendants' statements, it is unclear how the facts of this case support a fraudulent  
2 inducement and rescission claim. Accordingly, the Court will grant leave to amend the complaint  
3 only if plaintiffs can demonstrate that allowing amendment will not be futile.”) In seeking leave  
4 to file a fifth amended complaint, plaintiffs sought to assert claims for intentional  
5 misrepresentation, negligent misrepresentation, and rescission. Plaintiffs’ motion was denied.  
6 920 F. Supp.2d 86, 90 (D.D.C. 2013). An appeal was filed on February 26, 2013, to the United  
7 States Court of Appeals for the District of Columbia. In the present case, plaintiff Grossman, is a  
8 member of the putative class in the pending appeal in the District of Columbia.

9 Dr. Grossman filed this action on March 27, 2013, approximately one month after the  
10 appeal was filed in the District of Columbia consolidated action. The present action is brought  
11 against the same defendants, seeks the same relief for the same putative class of psychologists,  
12 based on the same or substantially similar facts and legal theories as the consolidated District of  
13 Columbia action. The complaint alleges one count of unjust enrichment; three counts of  
14 violating the California Unfair Competition Law (“UCL”), BUS. & PROF. CODE § 17200; one  
15 count of violating the California False Advertising Law (“FAL”), BUS. & PROF. CODE § 17500;  
16 one count off fraud and deceit; and one count of negligent misrepresentation.

17 Defendants seek to transfer this action to the District of Columbia under the first-to-file  
18 rule or alternatively, the federal transfer statute, 28 U.S.C. § 1404(a).

### 19 **B. First-to-File Rule**

20 “The first-to-file rule is a doctrine of federal comity which permits a district court to  
21 decline jurisdiction over an action when a complaint involving the same parties and issues has  
22 already been filed in another district.” *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1161 (9th Cir.  
23 2011) (quoting *Pacesetter Sys. Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982)).  
24 The doctrine of comity seeks to promote judicial efficiency by avoiding any unnecessary burden  
25 on the federal judiciary and by avoiding duplicative and conflicting judgments. *See Church of*  
26 *Scientology v. United States Dep't of Army*, 611 F.2d 738, 750 (9th Cir. 1979). “[W]hen two  
27 courts have concurrent jurisdiction over a dispute involving the same parties and issues . . . the  
28 forum in which the first-filed action is lodged has priority.” Charles Alan Wright, *et al.*,

1 FEDERAL PRACTICE AND PROCEDURE § 3854 (3d ed. 2009). “This ‘first-to-file’ rule is not a rigid  
2 or inflexible rule to be mechanically applied, but rather is to be applied with a view to the  
3 dictates of sound judicial administration.” *Pacesetter*, 678 F.2d at 95.

4 Plaintiff initially argues that defendants’ motion to transfer based on the first-to-file rule  
5 is moot because the District of Columbia dismissed the first-filed action and the matter is on  
6 appeal. However, plaintiff offers no pertinent legal basis for this proposition. Indeed, if the  
7 Court of Appeals reverses the district court’s decision, the issues raised here will be substantially  
8 the same. Further, the district court in the District of Columbia has ample experience with the  
9 facts alleged in the case brought in the Southern District of California. As noted below, the  
10 issues, while not fully identical, are substantially the same.

11 In applying the “first to file” rule, a court looks to three threshold factors: “(1) the  
12 chronology of the two actions; (2) the similarity of the parties, and (3) the similarity of the  
13 issues.” *Z-Line Designs, Inc. v. Bell'O Int'l LLC*, 218 F.R.D. 663, 665 (N.D. Cal. 2003).  
14 The first-filed action was initiated in the District of Columbia in 2010, and the present complaint  
15 was filed in 2013.

16 The parties in the earlier and present case are the same – plaintiff Grossman is a member  
17 of the class in the District of Columbia action. “In a class action, the classes, and not the class  
18 representatives, are compared.” *Ross v. U.S. Bank Nat'l Ass'n*, 542 F. Supp.2d 1014, 1020 (N.D.  
19 Cal. 2008)). If the first-to-file rule were to require a strict comparison only of the named  
20 plaintiffs in the two actions, the rule would almost never apply in class actions. This result would  
21 be in direct conflict to the purposes of the first-to-file rule because class actions are frequently  
22 complex affairs which tax judicial resources—the very cases in which the principles of avoiding  
23 duplicative proceedings and inconsistent holdings are at their zenith. *Cf. Mayfield v. Barr*, 985  
24 F.2d 1090 (D.C. Cir.1993) (recognizing that class actions are “often complex, drawn out  
25 proceedings demanding a large share of finite judicial resources”).

26 Defendants contend the claims involved in each action are substantially similar. *See, e.g.*,  
27 *PETA, Inc. v. Beyond the Frame, LTD*, 2011 WL 686158 (C.D. Cal. Feb. 16, 2011) (“Indeed, the  
28 first-to-file rule does not require identical parties or issues, so long as the actions are

1 substantially similar or involve substantial overlap.”); *District Council 37 Health & Security*  
2 *Plan v. McKesson Corp.*, 2006 WL 1305235 (N.D. Cal. May 11, 2006) (“Exact parallelism  
3 between the two actions need not exist; it is enough if the parties and issues in the two actions  
4 are substantially similar.” (quoting *Alioto v. Hoiles*, 2004 WL 2326367, at \*5 (N.D. Cal. Oct.  
5 12, 2004)).

6 But plaintiff contends that the issues in the present case are not identical to those asserted  
7 in the District of Columbia. Of course, the first-to-file rule does not require identical issues.  
8 Having reviewed the claims asserted in the District of Columbia consolidated action and the  
9 current case, the Court finds and concludes that the issues are substantially similar. Indeed, if the  
10 first-to-file rule is not applied in this case, the Court would necessarily be required to review  
11 claims and issues already decided and would risk conflict with the rulings made in the District of  
12 Columbia. In other words, this Court would have to consider the merits of the same or  
13 substantially similar claims raised in the first-filed case and would risk issuing an inconsistent  
14 order on the same or similar claims. This is the precise result the first-to-file rule is designed to  
15 avoid. *See Church of Scientology*, 611 F.2d at 750 (“The doctrine is designed to avoid placing an  
16 unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting  
17 judgments.”). The Court finds that the claims asserted in both actions are substantially similar.

18 Finally, plaintiff contends that equitable interests support the retention of this Court’s  
19 jurisdiction rather than transfer to the Court with the first-filed complaint. Plaintiff relies on the  
20 factors set forth under a 28 U.S.C. § 1404(a) analysis and cites *Callaway Golf Co. v. Corp.*  
21 *Trade Inc.*, 2010 WL 743829 (S.D. Cal. March 1, 2010) (Lorenz, J.).

22 In *Callaway*, the Court noted exceptions to the first-to-file rule:

23 Circumstances under which an exception to the first-to-file rule typically will be  
24 made include bad faith, anticipatory suit and forum shopping.” Another exception  
25 to the first-to-file rule applies if “the balance of convenience weighs in favor of the  
later-filed action.” This is analogous to the “convenience of parties and witnesses”  
on a transfer of venue motion pursuant to 28 U.S.C. § 1404(a).

26 *Id.*, at \*3 (internal citations omitted).


27 Here, the convenience of parties and witnesses does not provide a suitable exception to  
28 the first-to-file rule.

1 Although the first-to-file rule is “not a rigid or inflexible rule to be mechanically applied,  
2 but rather is to be applied with a view to the dictates of sound judicial administration,”  
3 *Pacesetter*, 678 F.2d at 95, the Court finds that all factors weigh in favor of transfer to the  
4 District of Columbia under the first-to-file rule. Because the action will be transferred based on  
5 the first-to-file rule, the Court will not consider defendants’ alternative request to transfer the  
6 action under 28 U.S.C. § 1404(a), the federal transfer statute.

7 Based on the foregoing, defendants’ motion to transfer venue to the United States District  
8 Court for the District of Columbia is **GRANTED**.

9 **IT IS SO ORDERED.**

10 DATED: December 12, 2013

11   
12 M. James Lorenz  
13 United States District Court Judge

14 COPY TO:

15 HON. JAN M. ADLER  
16 UNITED STATES MAGISTRATE JUDGE

17 ALL PARTIES/COUNSEL  
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