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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KATELYN KINN, *et al.*,

Plaintiff,

v.

THE QUAKER OATS COMPANY,

Defendant.

Case No. C16-1262RSL

ORDER GRANTING MOTION
AND TRANSFERRING CASE

This matter comes before the Court on “Defendant Quaker Oats Company’s Motion to Transfer to the Northern District of Illinois.” Dkt. # 10. Having reviewed the memoranda and exhibits submitted by the parties,¹ the Court finds as follows:

BACKGROUND

The background facts are not in dispute. Between April 29, 2016, and May 4, 2016, six lawsuits were filed alleging that the “100% Natural Whole Grain” labels on Quaker Oats products are false and misleading because the products actually contain measurable amounts of glyphosate (the herbicide in “Roundup”). The above-captioned matter was the last to be filed. Two of the actions were pending in the Northern District of Illinois, and the other three were transferred to that district by consent of the parties. A consolidated amended complaint seeking

¹ This matter can be decided on the papers submitted. Defendant’s request for oral argument is DENIED.

1 certification of a nationwide class of persons who purchased four specified Quaker Oats
2 products² was filed on August 11, 2016. On the same day, Quaker Oats removed this action from
3 state court and now requests that it be transferred to the Northern District of Illinois under the
4 first-to-file rule or 28 U.S.C. § 1404(a).

5 On September 9, 2016, plaintiffs filed an amended complaint in this action on behalf of a
6 nationwide class of all persons who purchased any Quaker Oats product made with glyphosate-
7 treated oats. In addition to the “100% Natural” claim discussed above, plaintiffs also allege that
8 Quaker Oats’ practice of spraying (or having its suppliers spray) glyphosate on the oats shortly
9 before harvest violates federal law. Plaintiffs do not, however, assert a separate claim based on
10 violations of federal food safety or agricultural regulations. Rather, plaintiff’s seek a declaration
11 that Quaker Oats cannot legally sell products treated with glyphosate and requests an injunction
12 against that practice. The consolidated amended class action complaint filed in Illinois is much
13 less direct regarding the legality of spraying glyphosate on the oats as a drying agent before
14 harvest, simply stating that “it is unclear whether regulations permit the specific use(s) of
15 glyphosate that lead to its presence in Quaker Oats.” Dkt. # 10-4 at ¶ 13. The Illinois action
16 involves a state law claim that Quaker Oats is selling adulterated or contaminated food, but it
17 does not allege that the pre-harvest use of glyphosate is illegal and it does not seek to enjoin the
18 practice.

19 DISCUSSION

20 Quaker Oats argues that this case should be dismissed based on the first-to-file rule.

21 There is a generally recognized doctrine of federal comity which permits a district court
22 to decline jurisdiction over an action when a complaint involving the same parties and
23 issues has already been filed in another district. . . . Normally sound judicial
24 administration would indicate that when two identical actions are filed in courts of
25 concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit
26 and no purpose would be served by proceeding with a second action.

26 ² In the alternative, the Illinois plaintiffs seek certification of classes of California, Florida,
27 Illinois, and New York customers who purchased one or more of the specified products.

1 Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 94-95 (9th Cir. 1982). The court in the
2 later-filed action can dismiss, stay, or transfer the later-filed suit. SAES Getters S.p.A. v.
3 Aeronex, Inc., 219 F. Supp.2d 1081, 1089 (S.D. Cal. 2002). The first-to-file rule should not be
4 applied mechanically, but it “should not be disregarded lightly” because it normally promotes
5 efficiency. Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622, 625 (9th Cir. 1991). When
6 determining whether the later-filed suit should be dismissed, stayed, or transferred, the Court
7 considers the chronology of the lawsuits, the similarities of the parties, and the similarities of the
8 issues. Kohn Law Group, Inc. v. Auto Parts Mfg. Miss., Inc., 787 F.3d 1237, 1240 (9th Cir.
9 2015).

10 This action was filed on May 4, 2016: it was the last of the six related cases to be filed.
11 Thus, the first consideration is satisfied. Plaintiffs argue, however, that this case should proceed
12 concurrently with the consolidated Illinois action because neither the parties nor the issues raised
13 are identical. Identity of the parties or issues is not required, however. Rather, the parties and the
14 issues must be substantially similar, such that application of the rule would maximize judicial
15 economy, consistency, and comity. Id. “The Supreme Court has emphasized that the solution of
16 these problems involves determinations concerning ‘[w]ise judicial administration, giving regard
17 to conservation of judicial resources and comprehensive disposition of litigation.’” Pacesetter,
18 678 F.2d at 95 (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183-84
19 (1952)).

20 There are, undoubtedly, substantial similarities and overlap between the cases, both as to
21 the parties and the issues. The Illinois plaintiffs seek to represent a nationwide class of persons
22 who purchased four specific Quaker Oats products. Plaintiffs in this action seek to represent a
23 nationwide class of persons who purchased any Quaker Oats product containing glyphosate-
24 treated oats. All of the members of the Illinois class would be members of the class in this
25 action. Although the classes are not identical, there is substantial overlap. With regards to the
26 issues raised, plaintiffs in this action intend to pursue the same “100% Natural” consumer
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1 protection, negligence, warranty, and unjust enrichment claims that have been asserted in the
2 Illinois action. Discovery regarding the “100% Natural” claim in two separate lawsuits would
3 result in a gross duplication of effort for both the parties and the courts, as would the expected
4 motion practice and the presentation of evidence. The adjudication of the parties’ rights in one
5 case would necessarily affect their rights in the other case and/or run the risk of inconsistent
6 rulings. If the Court were considering plaintiff’s original complaint, there would be no doubt that
7 declining to exercise jurisdiction over this later-filed action would be appropriate.

8 Plaintiffs point out, however, that they recently amended their complaint to seek a
9 declaration of wrongdoing, injunctive relief, and damages related to Quaker Oats’ harvesting
10 techniques and that these requests that are not part of the Illinois action. The question is whether
11 the existence of an additional claim in the later-filed litigation upends the first-to-file rule. In the
12 circumstances presented here, it does not. While the additional request for an injunction barring
13 pre-harvest application of glyphosate is certainly a meaningful difference in the two cases,
14 considerations of judicial efficiency, the risk of inconsistent rulings, and deference to the
15 Northern District of Illinois’ existing jurisdiction over related matters all support a transfer.
16 Quaker Oats is not asking to dismiss this action – which the Court would deny – but to transfer it
17 to a court that is already dealing with similar issues and parties. Plaintiffs’ new claim will be
18 brought before that court, which can then determine the best and most efficient way to handle
19 the issues raised. Having a single court hear both cases will avoid the risk of inconsistent
20 determinations on both the “100% Natural” claims and on certain facts and legal issues that will
21 impact plaintiffs’ challenge to Quaker Oats’ pre-harvest techniques. In addition, deference to the
22 first-filed cases is appropriate here where, at the time of filing, the claims were virtually identical
23 and plaintiffs belatedly added a new claim only after Quaker Oats sought transfer. “A contrary
24 holding could allow a party . . . to skirt the first-to file rule” merely by asserting a claim not
25 present in the earlier proceeding. Kohn Law Group, 787 F.3d at 1240.

26 Despite the existence of a unique claim in this action, both cases arise out of Quaker
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1 Oats' production and labeling methods. Plaintiff's decision to allege additional wrongdoing
2 arising from the presence of glyphosate in defendants' products does not change the fact that
3 simultaneous adjudication of cases in two separate districts would waste judicial resources,
4 multiply the proceedings, undermine judicial efficiency, and risk conflicting determinations of
5 the parties' legal rights. No apparent bar exists to the Illinois court hearing plaintiff's new claim:
6 that forum is "capable of efficiently resolving all issues, and economic use of both courts'
7 resources" will result from this Court's refusal to hear plaintiffs' claims. Pacesetter Systems,
8 Inc., 678 F.2d at 96 The Court finds that the balance of relevant factors weighs heavily in favor
9 of declining to exercise jurisdiction over this case.³

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11 For all of the foregoing reasons, the Court GRANTS defendant's motion (Dkt. # 10) and
12 TRANSFERS this case to the United States District Court for the Northern District of Illinois.

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14 Dated this 3rd day of November, 2016.

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16 Robert S. Lasnik
17 United States District Judge

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26 ³ Because transfer is appropriate under the first-to-file rule, the Court has not considered
27 defendant's alternate request for transfer under 28 U.S.C. § 1404(a) or the factors set forth in Jones v.
GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000).