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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION

ARIZA, *et al.*, individually and on behalf of others similarly situated,

Plaintiffs,

v.

LUXOTTICA RETAIL NORTH AMERICA, an Ohio corporation d/b/a LensCrafters,

Defendant.

JOINT MOTION FOR CONSOLIDATION AND FOR LEAVE TO FILE A CONSOLIDATED COMPLAINT

Case No. 17-cv-05216-PKC-RLM

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the parties respectfully submit this Joint Motion for Consolidation and for Leave to File a Consolidated Complaint. The parties agree that consolidation of the three related actions pending before this Court is appropriate, as it would (1) increase judicial economy, (2) reduce costs to the parties, and (3) reduce the risk of duplicative proceedings and inconsistent results.

For these reasons, Plaintiffs Yesenia Ariza, David Soukup, Kathleen Infante, and Gracelynn Tenagila (hereinafter, "Plaintiffs") and Defendant Luxottica Retail North America d/b/a LensCrafters (hereinafter, "Defendant" or "LensCrafters") respectfully move this Court for an order (1) consolidating the above-captioned matter pending in this Court with the cases later transferred to this District, along with any related class actions that are subsequently filed in, removed to, or transferred to this Court; and (2) granting Plaintiffs leave to file a consolidated complaint to streamline the litigation, lodged herewith. The parties respectfully submit for the Court's consideration a proposed order addressing the consolidation and ordering the filing of a consolidated complaint.

I. INTRODUCTION AND FACTUAL BACKGROUND

Plaintiffs Ariza and Soukup filed the above-captioned action against LensCrafters on September 5, 2017 and the case was assigned to this Court (the "New York Action"). The New York Action was brought on behalf of Plaintiffs Ariza and Soukup and a proposed class of New York consumers who purchased prescription eyeglasses from LensCrafters from September 5, 2011 to the present. Plaintiffs Ariza and Soukup alleged that they were induced to purchase and/or overpaid for prescription eyeglasses from LensCrafters when they otherwise would not

have based on false and misleading statements and omissions in violation of state and common law. They sought damages and injunctive and equitable relief.

The same day, Plaintiff Infante filed a similar case against LensCrafters in the United States District Court for the Northern District of California, which was assigned to the Hon. William Alsup (the "California Action"). The California Action was brought on behalf of Plaintiff Infante and a proposed class of California consumers who purchased prescription eyeglasses from LensCrafters from September 5, 2011 to the present. Plaintiff Infante alleged that she was induced to purchase and/or overpaid prescription eyeglasses from LensCrafters when she otherwise would not have based on false and misleading statements and omissions in violation of state and common law. She sought damages and injunctive and equitable relief.

Also the same day, Plaintiff Tenagila filed a similar case against LensCrafters in the United States District Court for the Southern District of Florida, which was assigned to the Hon. Donald Middlebrooks (the "Florida Action"). The Florida Action was brought on behalf of Plaintiff Tenagila and a proposed class of Florida consumers who purchased prescription eyeglasses from LensCrafters from September 5, 2011 to the present. Plaintiff Tenagila alleged that she was induced to purchase and/or overpaid for prescription eyeglasses from LensCrafters when she otherwise would not have based on false and misleading statements and omissions in violation of state and common law. She sought damages and injunctive and equitable relief.

On October 27, 2017, LensCrafters filed a Joint Motion to Change Venue in the Florida Action, requesting transfer of that case to this Court and consolidation with the New York Action. On October 30, 2017, Judge Middlebrooks granted the joint motion to transfer. *Tenagila v. Luxottica Retail North America*, No. 2:17-cv-14311-DMM (S.D. Fla. Oct. 30, 2017) (Dkt. No. 16). The Florida Action was transferred the same day. A Notice of Related Case was

entered, indicating that the Florida Action was related to the New York Action. *Tenagila v. Luxottica Retail North America*, No. 1:17-cv-06315-PKC-LB (E.D.N.Y. Oct. 30, 2017) (Dkt. No. 19). The Florida Action was initially assigned to the Hon. Nicholas Garaufis, but was reassigned to this Court on November 16, 2017.

Also on October 27, 2017, LensCrafters filed a Joint Motion to Transfer Case Venue in the California Action, requesting transfer of that case to this Court and consolidation with the New York Action.

On November 1, 2017, Judge Alsup granted the joint motion to transfer, noting that "[b]oth actions concern LensCrafters' alleged representations and advertisements for its AccuFit Digital Measurement System" and that the parties sought consolidation with the New York and Florida Actions because the parties asserted that "all three cases involve overlapping witnesses and documents, and . . . transfer will further promote the interest of justice by conserving the parties' and the courts' resources and avoiding the possibility of conflicting outcomes." *Infante v. Luxottica Retail*, No. C 17-05145 WHA (N.D. Cal. November 1, 2017) (Dkt. No. 23). The California Action was transferred on November 2, 2017. *Infante v. Luxottica Retail North America*, No. 1:17-cv-06389-PKC-RLM (E.D.N.Y. Nov. 2, 2017). A Notice of Related Case was entered, indicating that the California Action was related to the New York Action. The California Action was initially assigned to Magistrate Judge Ramon Reyes, Jr., but was reassigned to this Court on November 16, 2017.

Consolidating the three cases: (1) increases judicial economy, (2) reduces costs to the parties, and (3) reduces the risk of duplicative proceedings and inconsistent results. This is a matter regarding which the Court has significant discretion. *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1012 (5th Cir. 1977) (trial courts have inherent managerial power "to

control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigations."); *accord Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990), *cert. denied*, 498 U.S. 920 (1990) ("The trial court has broad discretion to determine whether consolidation is appropriate.") (collecting cases). Courts are even permitted to "consolidate legal actions, *sua sponte*" under Rule 42(a). *Delvin v. Transp. Comm'n Int'l Union*, 175 F.3d 121, 130 (2d Cir. 1999).

Plaintiffs now move the Court to (1) consolidate the California and Florida Actions with the New York Action, along with any related actions that are subsequently filed in, removed to, or transferred to this Court; and (2) grant Plaintiffs leave to file the consolidated complaint lodged herewith.[1]

II. ARGUMENT

Plaintiffs request that the California and Florida Actions be consolidated with the New York Action pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. Rule 42(a) provides that:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

See Feldman v. Hanley, 49 F.R.D. 48, 49 (S.D.N.Y. 1969)). Judges are encouraged "to make good use of Rule 42(a) of the Federal Rules of Civil Procedure . . . in order to expedite the trial and eliminate unnecessary repetition and confusion." *Dupont v. S. Pac. Co*., 366 F.2d 193, 195

[1] The parties stipulate that the filing of a consolidated complaint shall not constitute an amendment pursuant to Federal Rule of Civil Procedure 15(a).

(5th Cir. 1966), *cert denied*, 386 U.S. 958 (1967); *accord Delvin v. Transp. Comm'ns Int'l Union*, 175 F.3d 121, 130 (2d. Cir. 1990).

In exercising discretion to consolidate cases, the Second Circuit has instructed courts to consider:

> whether the specifics risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Johnson v. Celotex Corp., 899 F.2d 1281, 1285 (2d. Cir. 1990), *cert denied,* 498 U.S. 920 (1990) (internal quotations and citation omitted). A number of these factors are present here.

First, this Court has already categorized the California and Florida Actions as related cases. *See Tenagila v. Luxottica Retail North America*, No. 1:17-cv-06315-PKC-LB (E.D.N.Y. Oct. 30, 2017); *Infante v. Luxottica Retail*, No. C 17-05145 WHA (N.D. Cal. Nov. 2, 2017); *see also Guidelines For the Division Of Business Among District Judges, Eastern District of New York*, Rule 50.3.1(a) ("A civil case is 'related' to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transaction or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge."). This Court has already acknowledged that these cases involve similar factual and legal issues Here, the factual and legal issues in the three cases are sufficiently similar, and the differences do not outweigh the interest of judicial economy served by consolidation. This factor counsels in favor of consolidation.

Second, LensCrafters joins in this Motion. *Olsen v. N.Y. Comm. Bancorp, Inc.*, 233 F.R.D. 101, 104 (E.D.N.Y. 2005) ("it is apparent that no party will suffer prejudice from

consolidation, a fact confirmed by the complete absence of any opposition thereto."). All of these actions were recently filed and share a response deadline of December 15, 2017, which if the cases are promptly consolidated would not need to be postponed upon the filing of a consolidated complaint.

Third, the failure to consolidate could result in inconsistent judgments regarding the overlapping claims and/or factual and legal questions at issue. It is a "primary and indisputable objective of consolidation . . . to prevent separate actions from producing conflicting results" because the failure to consolidate can "risk inconsistent rulings and could foster confusion, unnecessary repetition, and excessive costs and delay." *Fountain v. U.S.*, Nos. 8:13-CV-255 (NAM/RFT), 3:14-CV-964 (NAM/RFT), 2014 WL 4327334, at *3 (N.D.N.Y. Aug. 29, 2014) (granting consolidation for motion practice). This risk of inconsistent judgments is eliminated by consolidating the California, Florida, and New York Actions.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed order submitted herewith that (1) consolidates the California and Florida Actions with the New York Action, along with any related actions that are subsequently filed in, removed to, or transferred to this Court; and (2) grant Plaintiffs leave to file the Consolidated Complaint lodged herewith.

Dated: December 7, 2017

Respectfully submitted:

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