UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

BRIAN PAIGE, individually and on behalf of all others similarly situated, Plaintiff, v. BITCONNECT INTERNATIONAL PLC, et al., Defendants.	)	Civil Action No. 3:18-CV-058-CHB **ORDER GRANTING UNOPPOSED MOTION FOR TRANSFER OF VENUE**

*** *** *** ***

This matter is before the Court on the plaintiff's Unopposed Motion for Transfer of Venue [R. 37]. The Motion states that "Defendant Ryan Maasen . . . the only Defendant who has appeared in this Action . . . does not oppose the relief requested," *Id.* at p. 1, and no response in opposition has been filed by any defendant. For the reasons stated herein, the Court will grant the motion.

I. Background

As the plaintiff explains in his Motion, "[o]n January 29, 2018, [p]laintiff initiated this putative class action by filing a Complaint alleging violations of Kentucky securities law, KRS 292.310, *et seq.*; Sections 5(a) and 5(c), 15 U.S.C. § 77e(a) and (c), of the Securities Act of 1933 (the "Securities Act"), breach of contract, fraud by concealment, and violation of the Kentucky Consumer Protection Act, KRS 367.120, *et seq.*" [R. 37 at pp. 1-2] The Motion requests that, under either the "first-to-file" rule or 28 U.S.C. § 1404(a), this Court transfer this case to the Southern District of Florida so that it may be consolidated with litigation currently pending in that court. [R. 37 at p. 6]

Another case involving the same Defendants and similar legal claims had already been filed on January 24, 2018 (four days before this case was filed): *Wildes, et al. v. BitConnect Int'l PLC, et al.*, No. 9:18-cv-80086-DMM (S.D. Fla. Jan 24, 2018) (the "*Wildes* Action"). And after this case was filed, multiple others followed. Those which were filed outside the Southern District of Florida have subsequently been transferred to that district, and all but one of them have been consolidated with the *Wildes* Action. *See Long, et al. v. BitConnect Int'l, PLC, et al.*, No. 6:18-cv-154-RBD-DCI, R. 16 (M.D. Fla. Jan. 30, 2018); *Mengehsa v. BitConnect International PLC.*, No. 0:18-cv-279-NEB-SER, R. 30 (D. Minn. Jan. 31, 2018); *Kline, et al. v. BitConnect, et al.*, No. 8:18-cv-319-EAK-MAP, R. 32 (M.D. Fla. Feb. 7, 2018); *Avalos v. BitConnect International, PLC, et al.*, No. 1:18-cv-21118-DMM, R. 11 (S.D. Fla. Mar. 23, 2018); *Wildes, et al. v. BitConnect Int'l PLC, et al.*, No. 9:18-cv-80086-DMM, R. 46 (S.D. Fla. Jan 24, 2018) (consolidating cases).

II. Analysis

"The first-to-file rule, while not frequently discussed by [the Sixth Circuit], is a well-established doctrine that encourages comity among federal courts of equal rank. The rule provides that when actions involving nearly identical parties and issues have been filed in two different district courts, the court in which the first suit was filed should *generally* proceed to judgment." *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 551 (6th Cir. 2007) (emphasis original) (internal quotation marks and citations omitted). "In order for suits filed in different districts to be duplicative, they must involve nearly identical parties and issues. While there is a paucity of Sixth Circuit case law explaining how to apply the first-to-file rule, courts generally evaluate three factors: (1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake. If these

three factors support application of the rule, the court must also determine whether any equitable considerations, such as evidence of inequitable conduct, bad faith, anticipatory suits, [or] forum shopping, merit not applying the first-to-file rule in a particular case." *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 789 (6th Cir. 2016) (internal quotation marks and citations omitted). Where the three factors set out above are satisfied, the first-to-file rule presumptively applies. *Id.*

While the Court is not aware of a Sixth Circuit case explicitly sanctioning transfer of venue pursuant to the first-to-file rule, the Sixth Circuit has indicated that a district court applying the rule may "stay the suit before it," "allow both suits to proceed," "enjoin the parties from proceeding in the other suit," or dismiss the suit entirely. *Baatz*, 814 F.3d at 793. Stressing "the need for the district court to have discretion in managing its docket," the Sixth Circuit expressly stated that it "cannot anticipate every situation involving the first-to-file rule that may arise, and will not limit the district courts' available options." *Id.* Other courts, such as the Fifth and Eleventh Circuits, have indicated that the first-to-file rule provides an appropriate basis to transfer a case. *See W. Gulf Mar. Ass'n v. ILA Deep Sea Local 24, S. Atl. & Gulf Coast Dist. of ILA, AFL-CIO*, 751 F.2d 721, 729 n. 1 (5th Cir. 1985); *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 606 (5th Cir. 1999). So did two judges from the Middle District of Florida in cases which have since been consolidated with the *Wildes* Action. *See Kline, et al. v. BitConnect, et al.*, No. 8:18-cv-319-EAK-MAP, R. 32; *Long, et al. v. BitConnect Int'l, PLC, et al.*, No. 18-cv-154-RBD-DCI, R. 16.

A. Chronology of Events

"The dates to compare for chronology purposes of the first-to-file rule are when the relevant complaints are filed." *Baatz*, 814 F.3d at 790 (citation omitted). "For purposes of first-

to-file chronology, the date that an original complaint is filed controls." *Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assocs., Inc.*, 16 F. App'x 433, 437 (6th Cir. 2001). The original complaint in the *Wildes* Action was filed on January 24, 2018, while the complaint in this action was filed on January 29, 2018. *See* [R. 1]; *Wildes*, 18-cv-80086-DMM, [R. 1]. Clearly, the chronology of events favors applying the first-to-file rule in this case.

B. Similarity of the Parties

"The first-to-file rule applies when the parties in the two actions 'substantial[ly] overlap,' even if they are not perfectly identical." *Baatz*, 814 F.3d at 790 (citation omitted). "[F]or purposes of identity of the parties when applying the first-to-file rule, courts have looked at whether there is substantial overlap with the putative class even though the class has not yet been certified." *Baatz*, 814 F.3d at 790.

Here, all of the defendants named in the Complaint in this action are defendants in the *Wildes* Action. *See* [R. 1 at p. 4]; *Wildes*, 18-cv-80086-DMM, [R. 48 at p. 2]. The named plaintiff in this action is not named in the *Wildes* Action, but it appears to the Court that the putative class in this action would at least have substantial overlap with – if not actually be included within - the putative class in the *Wildes* Action (at least to the extent that the putative class in this action suffered damage). *Compare* [R. 1 at p. 19] (describing putative class as "[a]ll Kentucky residents who invested money in the Bitconnect lending program between January 25, 2017 and January 17, 2018, through the transfer of Bitcoin or any other currency to Bitconnect" and "[a]ll Kentucky residents who invested money with Bitconnect under Maasen's affiliate code, referral program, or otherwise in a way that resulted in Maasen receiving any bonus, money, thing of value or other benefit from the class member investing with Bitconnect"[1]) *with*

[1] While the Complaint in this action also contains a description of a "National Class," the Court construes the putative class described in the Complaint to be limited to this description of a "Kentucky Class." However, the

Wildes, 18-cv-80086-DMM, [R. 48 at p. 12] (describing putative class as "all individuals and entities who transferred to BITCONNECT any fiat currency or cryptocurrency to invest in BCC and/or the BitConnect Investment Programs and who suffered financial injury as a result thereof" other than the defendants or anyone they control, are affiliated with, etc.). While the parties are not perfectly identical between the two cases, they do substantially overlap. Thus, the Court finds that the similarity of the parties favors applying the first-to-file rule in this case.

C. Similarity of the Issues or Claims

"Just as with the similarity of the parties factor, the issues need only to substantially overlap in order to apply the first-to-file rule. The issues need not be identical, but they must be materially on all fours and have such an identity that a determination in one action leaves little or nothing to be determined in the other." *Baatz*, 814 F.3d at 791 (internal quotation marks and citations omitted).

Here, the Court is satisfied that the issues in the two cases substantially overlap and that a determination in the *Wildes* Action would leave little to be determined in this action. This action states claims for violation of Kentucky securities law, KRS 292.310, *et seq.*; violation of Sections 5(a) and 5(c), 15 U.S.C. § 77e(a) and (c), of the Securities Act of 1933; Breach of Contract; Fraud by Concealment; and violation of the Kentucky Consumer Protection Act, KRS 367.120, *et seq.* [R. 1 at 22-25] The *Wildes* Action states claims for violation of Section 12(a) of the Federal Securities Act; violation of Section 15(a) of the Federal Securities Act; Breach of Contract; Unjust Enrichment; Violation of Florida's Deceptive and Unfair Trade Practices Act; Fraudulent Inducement; Fraudulent Misrepresentation; Negligent Misrepresentation; Conversion;

Court believes that the description of the "National Class" would still fit within the class described in the *Wildes* Action, as the descriptions of the "National Class" and the "Kentucky Class" are nearly identical apart from the residency of the class members.

Civil Conspiracy; and Negligent Failure to Warn. *Wildes*, 18-cv-80086-DMM, [R. 40-56] While the issues and claims are not identical, the Court finds that they are "materially on all fours." The two complaints state similar claims for breach of contract, securities violations, and various forms of consumer fraud, and seek similar relief. Indeed, the plaintiff and the sole defendant to appear in this case have both indicated that they believe the claims and issues in these cases to substantially overlap. *See* [R. 36 at p. 2 ("[i]n the interest of justice and to avoid the inherent inequity of Maasen having to defend against these factually similar cases across multiple districts, all cases should be consolidated"); R. 37 at p. 5 ("[b]ecause the operative factual allegations underlying Plaintiff's claims and the claims [in the *Wildes* Action] are virtually identical, and there is substantial overlap in the specific claims brought in each action, both actions involve nearly identical issues.")]. Thus, the Court finds that the similarity of the issues or claims favors applying the first-to-file rule in this case.

Finally, the Court sees no equitable considerations (e.g., evidence of inequitable conduct, bad faith, anticipatory suits, or forum shopping) which would merit not applying the first-to-file rule in this case. All three factors of the first-to-file rule being satisfied, and there being no equitable considerations to militate against transfer, the Court will grant the Motion.[2]

Accordingly, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Plaintiff's **Unopposed Motion for Transfer of Venue** [**R. 37**] is **GRANTED**.
2. This action **SHALL** be transferred to the United States District Court for the Southern District of Florida.

November 9, 2018

cc: Counsel of record

Claria Horn Boom

Claria Boom, District Judge
United States District Court

[2] Because the Court finds that transfer is appropriate under the first-to-file rule, it declines to also analyze whether transfer would be appropriate under 28 U.S.C. § 1404(a).