UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	CV 19-472 PSG (SKx)	Date	March 28, 2019
Title	Lynn Bolden v. Barilla America		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order GRANTING Defendant's motion to transfer

Before the Court is Defendant Barilla America's ("Defendant") motion to transfer or alternatively to stay. *See* Dkt. # 14 ("*Mot.*"). Plaintiff Lynn Bolden ("Defendant") has opposed this motion, *see* Dkt. # 23 ("*Opp.*"), and Defendant replied, *see* Dkt. # 24 ("*Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **GRANTS** the motion to transfer and **ORDERS** the case transferred to the U.S. District Court for the Northern District of Illinois.

I. Background

A. This Case

Defendant manufactures various varieties of pasta sauce that are advertised on the label as containing "No Preservatives." *See Complaint*, Dkt. # 1 ("*Compl.*"), ¶ 2. However, the sauces contain citric acid. *See id.* ¶ 3. Plaintiff, who was a frequent purchaser of Defendant's sauces, alleges that the "No Preservatives" advertising is false and misleading because citric acid is a preservative. *See id.* ¶¶ 4–5, 9.

On January 22, 2019, Plaintiff filed suit in this Court on behalf of a putative nationwide class of "all persons in the United States who, within the relevant statute of limitations periods, purchased the products," and a California subclass of "all California residents who, within the relevant statute of limitations periods, purchased the Product." *See id.* ¶¶ 40–41. The complaint asserts claims on behalf of the California subclass for violations of California's False Advertising Law ("FAL"), Consumer Legal Remedies Act ("CLRA"), and Unfair Competition Law ("UCL"), as well as claims on behalf of all class members for breach of express warranty,

breach of implied warranty, negligent misrepresentation, and unjust enrichment. *See id.* ¶¶ 54–110.

B. The *Kubilius* Case

Almost four months before this case was filed, a similar case was filed in the Northern District of Illinois, entitled *Kubilius v. Barilla America*, No. 18-CV-6656 (N.D. Ill.). *See Kubilius Complaint*, Dkt. # 14-1 ("*Kubilius Compl.*"). The complaint in *Kubilius* also alleges that the "No Preservatives" advertising on the label of Defendant's pasta sauces is deceptive because the sauces contain citric acid. *See id.* ¶ 2. Similar to this case, the plaintiff in *Kubilius* seeks to represent a nationwide class of "all persons or entities in the United States who made retail purchases of products during the applicable limitations period."[1] *Id.* ¶ 52. No class has yet been certified.

The *Kubilius* complaint references consumer protection statutes from all fifty states and the District of Columbia, including the CLRA and UCL. *See id.* ¶ 6. It asserts a cause of action for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act on behalf of the nationwide class, but it notes that this claim is brought "in conjunction with the substantively similar consumer protections laws of the other states and the District of Columbia to the extent the Illinois Consumer Fraud and Deceptive Practices Act does not reach the claims of the out-of-state class members." *Id.* at 18. It also asserts two causes of action for violations of New York consumer protection laws and a cause of action for common law fraud. *See id.* ¶¶ 78–103.

C. The Current Motion

Defendant moves to transfer this case to the Northern District of Illinois under the "first-to-file rule." *See Mot.* 1:1–14:24. In the alternative, it asks the Court to stay this case pending the resolution of *Kubilius*. *See id.* 14:26–15:15.

II. Legal Standard

The "first-to-file rule is a generally recognized doctrine of federal comity" that permits a district court to exercise its discretion to dismiss, stay, or transfer a case when another case involving similar issues and parties has previously been filed. *Selection Mgmt. Sys., Inc. v. Torus Specialty Ins. Co.*, No. 4:15-cv-5445-YGR, 2016 WL 304781, at *2 (N.D. Cal. Jan. 26,

[1] In the alternative, the *Kubilius* plaintiff seeks to represent a class of individuals who purchased Defendant's products in New York. *Kubilius Comp.* ¶ 53.

2016). The purpose of the rule is to promote efficiency, avoid placing an unnecessary burden on the federal judiciary, and avoid the possibility of conflicting judgments. *Church of Scientology of Cal. v. U.S. Dep't of the Army*, 611 F.2d 738, 750 (9th Cir. 1979). To determine whether the first-to-file rule applies, courts look to three factors: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues. *Jeske v. Cal. Dep't of Corr. and Rehab.*, No. 1:11-cv-01838 JLT, 2012 WL 1130639, at *5 (E.D. Cal. Mar. 30, 2012). "The first-to-file rule does not require strict identity of parties; 'it is enough if the parties and issues in the two actions are substantially similar.'" *Alakozai v. Chase Inv. Servs. Corp.*, No. CV 11-9178 SJO (JEMx), 2012 WL 748584, at *5 (C.D. Cal. Mar. 1, 2012).

III. Discussion

As explained above, to justify application of the first-to-file rule, Plaintiff must show that (1) the *Kubilius* case was filed before this case, (2) that *Kubilius* involves substantially similar parties, and (3) that *Kubilius* involves substantially similar issues. Further, because Defendant seeks transfer of the case to the Northern District of Illinois, it must also show that the case could originally have been brought in that district. *See* 28 U.S.C. § 1404(a).

The parties do not dispute that the *Kubilius* case was filed before this case, nor do they dispute that this case could originally have been brought in the Northern District of Illinois because Defendant's principal place of business is in that district. *See Mot.* 5:21–6:24, 12:3–13:12; *see generally Opp.* (not disputing these issues). Accordingly, the only question before the Court is whether the two cases involve substantially similar parties and issues.

A. Similarity of the Parties

This case and *Kubilius* were brought by different named plaintiffs. But both of the plaintiffs seek to represent substantially identical nationwide classes of purchasers of Defendant's pasta sauces. The parties disagree about whether the Court should evaluate the similarity of the proposed classes or instead look at only the named plaintiffs in determining whether the parties in the two cases are substantially similar.

Plaintiff on relies the decision in *Lac Anh Le v. Pricewaterhousecoopers LLP*, No. C-07-5476 MMC, 2008 WL 618938 (N.D. Cal. Mar. 4, 2008), to argue that only the named plaintiffs should be compared. *See Opp.* 5:18–6:5. In *Le*, the court found that a *stay* under the first-to-file rule was not merited because the two putative class actions at issue were brought by different

named plaintiffs *See id.*, at *1. Undercutting Plaintiff's position in this case however, the court in *Le* ordered the parties to show cause why the second-filed case should not be *transferred* to the district of the first-filed case, noting that the cases presented the same underlying issue and that transfer could "avoid[] the potential for conflicting decisions." *See id.*, at *2. In short, while *Le* held that a *stay* under the first-of-file was not merited when the second-filed case was brought by a different named plaintiff, it certainly did not hold that *transfer* was unwarranted in these circumstances. Further, as later cases have recognized, *Le*'s decision to compare only the named plaintiffs in evaluating the similarity of the parties is an outlier. *See Wallerstein v. Dole Fresh Vegetables*, 967 F. Supp. 2d 1289, 1295 (N.D. Cal. 2013). In applying the first-to-file rule to putative class actions, several courts have examined the overlap between the proposed classes, even before any class has been certified. *See id.* (collecting cases).

While the Court is normally hesitant to examine allegations relating to proposed classes before the class certification stage, it concludes that such an inquiry is merited in the context of applying the first-to-file rule because a primary purpose of the rule is to head-off unnecessarily duplicative litigation. A determination about whether litigation is likely to be duplicative inherently involves some measure of prediction about the direction that each case is likely to take. It would be inefficient for two cases brought on behalf of identical proposed classes to proceed on parallel tracks in different districts before a motion for class certification only for one to later be transferred in the event a class is certified. Further, the Court does not see why the first-to-file rule's interests in efficiency and avoidance of inconsistent decisions would not apply equally to the class certification decision itself.

Accordingly, the Court concludes that it is appropriate to compare the putative classes in determining whether the parties in both cases are substantially similar. Here, the proposed nationwide classes in each case are essentially identical, with the possible exception that the starting dates for the limitations periods may not be precisely the same since the cases were filed at different times and are brought under some different statutes. Accordingly, the Court finds that the parties in the two cases are substantially similar for purposes of the first-to-file rule.

B. Similarity of the Claims

The similarity of claims factor "does not require total uniformity of claims but rather focuses on the underlying factual allegations." *Zimmer v. Dometic Corp.*, No. CV 17-6913 ODW (MRWx), 2018 WL 1135634, at *4 (C.D. Cal. Feb. 22, 2018). There is no dispute that the plaintiffs in both this case and *Kubilius* are pursuing claims based on the identical theory that

Defendant misleadingly advertised pasta sauces containing citric acid as containing "No Preservatives." The two cases differ only in the specific causes of actions they assert.

Plaintiff in this case brings California law claims under the CLRA, FAL, and UCL as well as common law claims for breach of express warranty, breach of implied warranty, negligent misrepresentation, and unjust enrichment. The *Kubilius* plaintiff asserts causes of action under Illinois and New York law, as well as a common law claim for fraud. *See Compl.* ¶¶ 54–110. However, the complaint in *Kubilius* incorporates the laws of other states to the extent that Illinois law does not apply to out-of-state class members and specifically mentions the CLRA and UCL with regard to claims by California purchasers. *See Kubilius Compl.* ¶ 6. Accordingly, there is at least some possibility that the court in *Kubilius* will end up applying the CLRA and UCL to claims by California purchasers if a nationwide class is certified. And the Court reiterates that the key factual question in both cases—whether it is deceptive or misleading to advertise a product containing citric acid as containing "No Preservatives"—is identical. Courts have transferred cases in similar circumstances, even when they involve different causes of action. *See Sporn v. Transunion Interactive, Inc.*, No. 18-cv-5424-YGR, 2019 WL 151575, at *5–6 (N.D. Cal. Jan. 10, 2019); *Zimmer*, 2018 WL 1135634, at *4.

In arguing that the different causes of action render the cases dissimilar, Plaintiff relies exclusively on *Mattero v. Costco Wholesale Corp.*, 336 F. Supp. 3d 1109 (N.D. Cal. 2018). The court in *Mattero* denied a motion to stay pending resolution of a similar case in another district. *Id.* at 1119. In its brief discussion of whether the issues were substantially similar, it put particular emphasis on the fact that the court in the first-filed case had already dismissed the only claims that overlapped between the two cases. *Id.* Citing the fact that the defendant in the case before it was the same party that had urged dismissal of the claims in the other case, it concluded that "[c]onsiderations of equity and comity likewise counsel against a stay on these facts." *Id.* This factor, which appears to have primarily driven the decision in *Mattero*, is not present here. Unlike in *Mattero*, there is still an outstanding possibility that both cases will require the court to apply the CLRA and UCL to claims by California purchasers.

While the Court acknowledges that this case and *Kubilius* may raise some different issues because they rely on different causes of action, it concludes that the fact that the two cases are based on an identical factual theory and are likely to present similar issues (e.g. whether a nationwide class can be certified) is sufficient to establish that they are substantially similar.

C. Other Factors

Plaintiff argues that regardless of whether the first-to-file rule factors are satisfied, the fact that she is a resident of California and that Defendant conducts significant operations in California counsel against transfer of this case. *See Opp.* 7:23–10:13. While these facts would be relevant in a traditional motion to transfer analysis, it is not clear that it is appropriate to consider them when analyzing a motion to transfer under the first-to-file rule. The Ninth Circuit has instructed that the first-to-file rule "should not be disregarded lightly." *Church of Scientology*, 611 F.2d at 750. Courts typically only make exceptions to the rule when there is evidence of "bad faith, [an] anticipatory suit, [or] forum shopping." *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 628 (9th Cir. 1991) (internal citations omitted). The case Plaintiff relies most heavily on in support of her argument that her state of residence should be paramount importance did not involve application of the first-to-file rule. *See Lax v. Toyota Motor Corp.*, 65 F. Supp. 3d 772 (N.D. Cal. 2014). Indeed, she has not cited any case where a court declined to apply the first-to-file rule because doing so would transfer a case away from the plaintiff's chosen forum—likely because *every* motion to transfer based on the rule seeks to do just that.

However, even assuming that the location of Plaintiff's residence could be a relevant consideration, the Court concludes that it is not enough to outweigh the significant interests in efficiency and consistency that would be vindicated by applying the first-to-file rule here. Because Defendant has shown that all of the relevant factors merit application of the first-to-file rule, the Court **GRANTS** its motion to transfer and **ORDERS** the case transferred to the Northern District of Illinois.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Defendant's motion to transfer this case to the U.S. District Court for the Northern District of Illinois. The Clerk is directed to transfer the case to that district.

Defendant's motion to stay is **DENIED AS MOOT**.

IT IS SO ORDERED.