JS-6 (administratively closed)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 25-2122-JFW(JRPx)** Date: June 25, 2025

Title: Sevak Krikorian, et al. *-v-* Post Consumer Brands, LLC, et al.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER GRANTING DEFENDANT'S MOTION TO STAY [filed 5/16/2025; Docket No. 19]**

On May 16, 2025, Defendant Post Consumer Brands, LLC ("Defendant" or "Post") filed a Motion to Stay. On May 23, 2025, Plaintiff Sevak Krikorian ("Plaintiff") filed his Opposition. On June 2, 2025, Defendant filed a Reply.

On May 16, 2025, Defendant filed a Motion to Dismiss the Complaint. On June 16, 2025, Plaintiff filed his Opposition. On June 23, 2025, Defendant filed a Reply.

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for July 7, 2025 is hereby vacated and the matters are taken off calendar. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 10, 2025, Plaintiff filed a Complaint against Post in this Court, alleging that the phrases "Natural Food" and "No Artificial Preservatives" appearing on Post's Rachael Ray Nutrish pet food products (the "Products") are false or misleading because those Products contained "artificial preservatives" and "artificial ingredients"—specifically, citric acid. In his Complaint, Plaintiff, individually and on behalf of all others similarly situated, alleges the following claims for relief against Post: (1) violation of the California Unfair Competition Law ("UCL") (on behalf of the California Subclass); (2) violation of California's False Advertising Law ("FAL") (on behalf of the California Subclass); (3) violation of California's Consumer Legal Remedies Act ("CLRA") (on

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behalf of the California Subclass); (4) Breach of Warranty (on behalf of the Nationwide Class and California Subclass), and (5) Unjust Enrichment/Restitution (on behalf of the Nationwide Class and California Subclass). With respect to the Nationwide Class, Plaintiff seeks to represent "[a]ll persons or entities that, within four years prior to the filing of this Complaint through present, purchased the Products in the United States, displaying the Challenged Representations on the Products' labels for purposes other than resale."

Approximately nine months earlier, a case with similar allegations was filed against Post and Ainsworth Pet Nutrition, LLC in the Southern District of New York: *Goetz v. Ainsworth Pet Nutrition, LLC*, Case No. 1:24-cv-04799 (S.D.N.Y.) (the "*Goetz*" action). The plaintiffs in *Goetz* allege that the defendants' representation that the Nutrish products are "natural" is false and misleading because the products contain "synthetic ingredients," including citric acid (in addition to other synthetic ingredients). Dkt. 19-1 ("*Goetz* FAC") ¶¶ 10, 15, 20. The plaintiffs in *Goetz*, individually and on behalf of all others similarly situated, allege the following claims for relief against Post and Ainsworth Pet Nutrition, LLC: (1) violation of the New York General Business Law § 349 (on behalf of the New York Subclass); (2) violation of the New York General Business Law § 350 (on behalf of the New York Subclass); and (3) breach of express warranty (on behalf of the Nationwide Class and the New York Subclass). With respect to the Nationwide Class, the plaintiffs in *Goetz* seek to represent "all persons in the United States who, during the maximum period of time permitted by law, purchased Defendants' Products for personal, family, or household consumption, and not for resale." Although there are many additional products at issue in *Goetz,* nine of the eleven products at issue in this action are also at issue in *Goetz*.[1]

Post moves to stay this action pending the resolution of *Goetz* under the first-to-file rule.

II. LEGAL STANDARD

The first-to-file rule is "a doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district." *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1161 (9th Cir. 2011) (quoting *Pacesetter Sys. Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir.1982)). This rule "was developed to serve [ ] the purpose of promoting efficiency well and should not be disregarded lightly." *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir.1991) (quoting *Church of Scientology v. U.S. Dep't of the Army*, 611 F.2d 738, 750 (9th Cir.1979) (internal quotation marks omitted)). In addition to judicial efficiency, this rule helps prevent "the risk of inconsistent decisions that would arise from multiple litigations of identical claims." *Ruckus Wireless, Inc. v. Harris Corp.*, 2012 WL 588792, at *2 (N.D. Cal. Feb. 22, 2012); *see also Church of Scientology*, 611 F.2d at 750 ("The doctrine is designed to avoid placing an unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting judgments."). "Under this doctrine, a district court may

[1]The only two products at issue in this action that are not at issue in *Goetz* are: (1) Rachael Ray Nutrish Bark, Real Beef Jerky, Peanut Butter & Bacon Dog Treats; and (2) Rachael Ray Nutrish Bark Jerky-Style Peanut Butter & Bacon with Real Chicken Dog Treat. These two products include the "No Artificial Preservatives" representation on the label, but not the "natural" or "natural food" representation.

choose to transfer, stay or dismiss an action where a similar complaint has been filed in another district court." *Hilton v. Apple Inc.*, 2013 WL 5487317, at *4 (N.D. Cal. Oct. 1, 2013) (citing *Alltrade*, 946 F.2d at 623).

"The court must consider three threshold factors in deciding whether to apply the first-to-file rule: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues." *Id.* (citing *Ward. v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal.1994); *Psystar*, 658 F.3d at 1161). However, the first-to-file rule is "not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound judicial administration." *Pacesetter*, 678 F.2d at 95. "Accordingly, a district court is left with the discretion to deviate from the first-to-file rule where equity dictates." *Hilton*, 2013 WL 5487317, at *4 (citing *Alltrade*, 946 F.2d at 628 ("The most basic aspect of the first-to-file rule is that it is discretionary, 'an ample degree of discretion, appropriate for disciplined and experienced judges, must be left to the lower courts.' ") (quoting *Kerotest Mfg. Co. v. C–O–Two Fire Equip. Co.*, 342 U.S. 180, 183–84 (1952))). "The circumstances under which an exception to the first-to-file rule typically will be made include bad faith, anticipatory suit, and forum shopping." *Alltrade*, 946 F.2d at 628.

III. DISCUSSION

The Court concludes that all three factors under the first-to-file rule favor granting a stay, and that staying this action is appropriate.

A. The *Goetz* action was filed first.

First, the *Goetz* action was filed on June 24, 2024, while this action was filed approximately nine months later on March 10, 2025. Accordingly, this factor favors granting a stay of this later-filed action. *See, e.g., Booker v. Am. Honda Motor Co.*, 2020 WL 7263538, at *2 (C.D. Cal. Oct. 20, 2020) (staying case when older case was filed only one month earlier); *Youngevity Int'l, Inc. v. Renew Life Formulas*, Inc., 42 F. Supp. 3d 1377, 1382 (S.D. Cal. 2014) (same).

B. The parties in this action are substantially similar to those in the *Goetz* action.

Second, the parties in this action are substantially similar to those in *Goetz*. Courts in the Ninth Circuit have "adopted a flexible approach in evaluating the similarity of the parties" in a "first to file" rule analysis. *See Frank v. Yardi Sys. Inc.*, 2024 WL 5402339, at *3 (C.D. Cal. Dec. 11, 2024) (collecting cases). Indeed, "this factor [is] satisfied where there is at least *some* overlap between the parties, as opposed to being completely identical." *Variscite, Inc. v. City of Los Angeles*, 2023 WL 3493557, at *11 (C.D. Cal. Apr. 11, 2023) (emphasis added).

Post is the only named defendant in this action, and one of two defendants named in the *Goetz* action. *See, e.g., Sapan v. Caliber Home Loans, Inc.,* 2024 WL 1684471, at *1 (C.D. Cal. Mar. 8, 2024) ("[I]t is irrelevant that there is an additional named defendant" in one of the actions when determining similarity of parties.); *Horne v. Nissan N. Am., Inc.*,-CV-00436-MCE-DB, 2018 WL 746467, at *3 (E.D. Cal. Feb. 6, 2018) (quotation marks and citation omitted) ("The rule is satisfied if some parties in one matter are also in the other matter, regardless of whether there are additional unmatched parties in one or both matters.").

In addition, Plaintiff in this action and the plaintiffs in the *Goetz* action seek to represent substantially overlapping nationwide classes. *See Rodriguez v. JetBlue Airways Corp.,* 2024 WL 841482, at *3 (C.D. Cal. Feb. 28, 2024).(citation omitted) ("[W]hen the cases involved are class actions, 'the classes, and not the class representatives, are compared.'"). Plaintiff in this action seeks to represent a nationwide class of "[a]ll persons or entities that, within four years prior to the filing of this Complaint through present, purchased the Products in the United States, displaying the Challenged Representations on the Products' labels, for purposes other than resale." Compl. ¶ 36. Similarly, the plaintiffs in *Goetz* seek to represent an almost identical nationwide class, which is "defined as all persons in the United Stated who, during the maximum period of time permitted by law, purchased [the] Products for personal, family, or household consumption, and not for resale." Although there are additional products at issue in *Goetz*, Plaintiff admits that nine of the eleven products at issue in this case are also at issue in *Goetz*. Accordingly, the vast majority of the putative nationwide class proposed in this action (including the named Plaintiff) would be part of the putative nationwide class in *Goetz*. See *Rodriguez*, 2024 WL 841482, at *4 (holding that there was substantial similarity even though there were "subclasses that are dissimilar from each other" when nationwide classes were "identical"); *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1296 (N.D. Cal. 2013) (finding substantially similar parties when both sets of plaintiffs sought to represent a "nationwide class of consumers who purchased the" same products); *Koehler v. Pepperidge Farm, Inc.*, 2013 WL 4806895, at *4 (N.D. Cal. Sep. 9, 2013) (finding parties were substantially similar when first-filed action sought to represent a nationwide class and the subsequent case sought to represent only a California class).

Accordingly, because the parties in this action are substantially similar to the parties in the *Goetz* action, the second factor also favors applying the first-to-file rule.

C. The issues in this action are substantially similar to those in the *Goetz* action.

Finally, the Court finds that the third factor weighs in favor of applying the first-to-file rule. To satisfy the third first-to-file factor, "the issues in both cases need not be identical, only substantially similar." *Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015). "Therefore, the first-to-file rule can apply even if the second case has additional or differing claims." *Rodriguez*, 2024 WL 841482, at *4. "To determine whether two suits involve substantially similar issues, [courts] look at whether there is 'substantial overlap' between the two suits," which exists "when key issues overlap and the resolution of one case could affect the resolution of the other." *Id.* (quotation marks and citation omitted).

The Court concludes that facts and issues in both cases are substantially similar. Both actions allege breach-of-express-warranty claims on behalf of a nationwide class and state subclasses. In addition, the other causes of action asserted by the plaintiffs in both cases are based on "nearly identical claims" under "their respective states' consumer protection statutes, all of which have [the] goal of protecting its consumers from unfair and deceptive business practices." *Young v. L'Oreal USA, Inc.*, 526 F. Supp. 3d 700, 706 (N.D. Cal. 2021).

The claims in both cases are also based in large part on similar underlying allegations that will require resolution of overlapping factual and legal issues. For instance, in both actions, the plaintiffs contend that the representations that the products are "natural" are deceptive. Compl. ¶ 5 (focusing on "Natural Food" representation; *Goetz* FAC ¶ 15 (focusing on "Natural" representation).

Furthermore, the plaintiffs in both cases contend that those representations are false or misleading because the products allegedly contained artificial citric acid. Compl. ¶ 17; *Goetz* FAC ¶ 20. Thus, both actions concern "the same predicate facts and legal theory that [Post] misled its consumers into purchasing a product." *Young*, 526 F. Supp. 3d at 706. In other words, the "central issues in each case will be similar"—including, among others, whether the "natural" representation was deceptive and whether the citric acid used as an ingredient in the products was, in fact, natural. *See Booker v. Am. Honda Motor Co.*, 2020 WL 7263538, at *4 (C.D. Cal. Oct. 20, 2020) (granting stay after finding that the "central issues in each case will be similar").

Moreover, even though Plaintiff's Complaint in this action is based on the "Natural Food" and "No Artificial Preservatives" representations, while *Goetz* concerns only the "Natural Food" representation, courts have held that issues are substantially similar in almost identical circumstances. For instance, in *Clardy v. Pinnacle Foods Group, LLC*, the first-filed action brought claims under consumer protection laws based on the representation that Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix contained "Nothing Artificial," while the later-filed action brought consumer protection claims as to the same muffin mix product and other additional products based on two representations—that the products contained "Nothing Artificial" and "Real Ingredients." 2017 WL 57310, at *1 (N.D. Cal. Jan. 5, 2017). The court held that the cases presented substantially similar issues, even though there were additional products and an additional representation at issue in the later-filed case. *Id*. at *3 ("Here, the Clardy and Biffar actions substantially overlap, because both actions allege that Defendant misrepresented the ingredients contained in the products at issue by labeling the boxes they are sold in with either 'Real Ingredients' or 'Nothing Artificial,' even though Defendant knew that artificial and/or unnatural ingredients were used.").

Accordingly, the Court concludes that this action and the *Goetz* action present substantially similar issues, which also favors applying the first-to-file rule.

D. Staying this action is appropriate.

"The circumstances under which an exception to the first-to-file rule applies typically will be made include bad faith, anticipatory suit, and forum shopping." *Las Vegas 26 Holdings, LLC v. Churchill MRA Funding I, LLC*, 2024 WL 3915151, at *1 (C.D. Cal. Aug. 14, 2024). Plaintiff does not argue any of these traditional exceptions are applicable.

Courts sometimes look beyond the traditional exceptions and consider equitable factors before deciding whether to grant a stay, such as the risk of prejudice to both parties, the risk of duplicative litigation, judicial economy, and the risk of conflicting judgments. *See, e.g., Rodriguez*, 2024 WL 841482, at *5 (considering these factors after concluding first-to-file rule was met); *Brumbach v. Hyatt Corp.*, 2021 WL 2850448, at *5 (S.D. Cal. July 8, 2021) (considering equitable considerations).

In this case, Plaintiff argues that he will "risk the loss of critical evidence" if there is a stay, but this argument is entirely unsupported and unpersuasive. Dkt. 24 at 13. Plaintiff fails to identify any specific evidence that would be at risk if this action were stayed, relying instead on vague assertions that "memories fade, documents are misplaced, and witnesses become harder to locate." *Id*. This type of speculative concern "about losing evidence" is insufficient to "support

denying the stay." *See Abu-Hajar v. AutoNation, Inc*., 2017 WL 10591886, at *4 (C.D. Cal. Aug. 17, 2017) ("Courts have granted motions to stay where concerns about losing evidence are speculative."); *see also Bay Area Surgical Grp., Inc. v. Aetna Life Ins. Co.*, 2014 WL 2759571, at *5 (N.D. Cal. June 17, 2014) ("This nebulous contention [regarding the risk of lost evidence] is entirely unsupported, however; just what evidence is at risk and how it could possibly be lost or destroyed is a mystery.").

In light of the similarity of issues presented by both actions, proceeding with this action while the *Goetz* action awaits class certification "will not promote efficiency, will not conserve judicial resources, and may produce conflicting opinions." *Clardy*, 2017 WL 57310, at *4. Accordingly, the Court concludes that staying this action is appropriate.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Stay is **GRANTED**. This action is stayed pending resolution of the *Goetz* action. Defendant's Motion to Dismiss the Complaint is **DENIED without prejudice** to re-filing after the stay in this action is lifted.

IT IS SO ORDERED.

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