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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TEXAS INSURANCE COMPANY,

CASE NO. C23-01473-KKE

9 Plaintiff(s),

ORDER GRANTING MOTION TO
INTERVENE AND STAYING CASE

v.

10 ARES INSURANCE MANAGERS LLC,

11 Defendant(s).

12 THIS MATTER comes before the Court on Talisman Specialty Underwriters, Inc.'s
13 motion to intervene. Dkt. No. 24. For the reasons set forth below, Talisman's motion is granted.
14 Further, the case is stayed pending resolution of the related case in the Eastern District of
15 Louisiana, *Texas Insurance Company v. Talisman Specialty Underwriters, Inc.*, No. 23-CV-
16 03412-SSV-JVM ("the Louisiana case").

17
18 **I. BACKGROUND**

19 Plaintiff Texas Insurance Company ("TIC") is a surplus line property and casualty
20 insurance carrier. Compl. (Dkt. No. 1) ¶ 6. Defendant Ares Insurance Managers LLC ("Ares") is
21 an independent managing general underwriter and excess surplus line broker specializing in
22 marine insurance. Compl. ¶ 8. TIC filed a complaint against Ares in this Court, alleging Ares has
23 been soliciting and entering insurance policies in TIC's name without authorization. Compl. ¶ 1.
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1 TIC and Catlin Insurance Company (“Catlin”) are sister companies owned by the North
2 American Casualty Company (“NAC”). Dkt. No. 30-2, at 12. On January 3, 2023, Talisman
3 Specialty Underwriters, Inc. (“Talisman”) and Catlin entered into a Managing General Agent
4 Agreement (“MGA Agreement”). *Id.* at 1. Under the MGA Agreement, Catlin appointed
5 Talisman to market and underwrite certain coverages on Catlin’s behalf. *Id.* The MGA Agreement
6 provided that if Catlin’s A.M. Best financial strength rating¹ fell below “A-,” NAC would permit
7 Talisman to “market and underwrite Property and Casualty, Accident and Health, and Financial
8 Lines Coverages on behalf of Texas Insurance Company on the same terms and conditions.” *Id.*
9 at 12, ¶ 29.

10 On December 29, 2022, Talisman entered a Delegated Underwriting Agreement (“DUA”)
11 with Ares. Dkt. No. 29-1. The DUA permits Ares to act on Talisman’s behalf in marketing and
12 entering insurance policies. *Id.*

13 On January 10, 2023, A.M. Best withdrew Catlin’s insurance rating. Dkt. No. 30, ¶ 12.
14 On January 16, 2023, Talisman informed Ares that the underwriter in their DUA was updated from
15 Catlin to TIC, and the two executed an amended DUA on January 18, 2023. Dkt. No. 29-3, 4. On
16 April 1, 2023, Talisman and TIC executed an MGA Agreement replacing the prior Talisman-Catlin
17 MGA Agreement. Dkt. No. 30-3.

18 On August 14, 2023, TIC filed the Louisiana case against Talisman, alleging Talisman
19 exceeded its authority under the MGA Agreement by causing Talisman sub-agents, including
20 Ares, to issue policies without proper authorization. *See* 2:23-cv-03412-SSV-JVM (E.D. La.
21 2023), Dkt. No. 1.² The Complaint alleged the following causes of action: breach of contract (*id.*

22 ¹ A.M. Best is “a global credit agency, news publisher, and data analytics provider specializing in the insurance
23 industry.” AM BEST, <https://web.ambest.com/home> (last visited Nov. 25, 2023).

24 ² TIC filed an amended complaint on November 22, 2023. 2:23-cv-03412-SSV-JVM (E.D. La. 2023), Dkt. No. 63.
TIC added causes of action for fraud by omission (*Id.* at 27) and intentional breach of contract (*Id.* at 32). The filing
of this amended complaint does not alter the Court’s analysis.

1 at 14), breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing,
2 conversion, misappropriation of name, deceptive practices and unfair competition, fraud, and
3 unjust enrichment. *Id.* at 16-21. The deceptive practices, unfair competition, and fraud claims
4 were brought under Louisiana statute. *Id.* (E.D. La. 2023), Dkt. No. 2, Ex. 3 at 13 (citing LA.
5 STAT. ANN. § 51:1405; L.A. CIV. CODE art. 1953). TIC sought a temporary restraining order and
6 preliminary injunction to prevent Talisman and its sub-agents from issuing additional policies on
7 TIC paper. 2:23-cv-03412-SSV-JVM (E.D. La. 2023), Dkt. No. 2.

8 On September 20, 2023, TIC filed the complaint against Ares in this Court. Dkt. No. 1.
9 The complaint alleged: violation of the Washington Consumer Protection Act (“CPA”) (WASH.
10 REV. CODE § 19.86.020), common law unfair competition, unjust enrichment, and, in the
11 alternative, breach of fiduciary duty. *Id.* at 8-10. TIC also sought a temporary restraining order
12 and preliminary injunction in this Court to prevent Ares from issuing any additional policies on
13 TIC paper. Dkt. No. 3. On September 26, 2023, this Court denied the motion for a temporary
14 restraining order. Dkt. No. 18. Following a status conference on October 4, 2023 (Dkt. No. 22),
15 the Court set a hearing on TIC’s motion for a preliminary injunction for November 6, 2023. Dkt.
16 No. 23.

17 On October 5, 2023, Talisman filed the pending motion to intervene in this case. Dkt. No.
18 24. TIC opposed the motion. Dkt. No. 32.

19 On October 12, 2023, the district court in Louisiana held an evidentiary hearing on TIC’s
20 pending motion for preliminary injunctive relief in the Louisiana case. 2:23-cv-03412-SSV-JVM
21 (E.D. La. 2023), Dkt. No. 42.

22 In light of the opposed motion to intervene and ongoing proceedings in the Louisiana case,
23 this Court converted the previously set hearing on November 6, 2023 from a preliminary injunction
24 hearing to a hearing on Talisman’s motion to intervene. Dkt. No. 38. In advance of the hearing,

1 the Court asked the parties to be prepared to address the impact, if any, of the “first-to-file” rule,
2 and whether, given the Louisiana case, this action should be stayed. Dkt. No. 38. Upon
3 consideration of the parties’ briefing and argument at the hearing, the Court concludes that
4 Talisman is entitled to intervene in this action and that this case should be stayed pending
5 adjudication of the Louisiana case.

6 II. DISCUSSION

7 A. Talisman May Intervene as a Matter of Right.

8 An applicant seeking to intervene as of right under Rule 24(a)(2)³ has the burden to show
9 that four requirements are met:

- 10 (1) the intervention application is timely;
- 11 (2) the applicant has a significant protectable interest relating to the property or transaction
that is the subject of the action;
- 12 (3) the disposition of the action may, as a practical matter, impair or impede the applicant’s
ability to protect its interest; and
- 13 (4) the existing parties may not adequately represent the applicant’s interest.

14 *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (cleaned up). These requirements “are
15 broadly interpreted in favor of intervention.” *Citizens for Balanced Use v. Montana Wilderness*
16 *Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). Further, the Court is guided primarily by “practical
17 considerations, not technical distinctions” in assessing whether an applicant has met its burden.
Sw. Ctr. for Biological Diversity, 268 F.3d 810, 818 (9th Cir. 2001) (cleaned up).

18 The Court finds Talisman has met its burden to intervene as a matter of right. TIC does
19 not challenge the timeliness of Talisman’s motion, and as such, the first requirement is met. Dkt.
20 No. 32 at 4, n.1.

21 While the “significant protectable interest” requirement has not been clearly defined by the
22 Supreme Court, this requirement is “generally satisfied when the interest is protectable under some
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24 ³ Federal Rule of Civil Procedure 24(a)(1) concerns unconditional statutory right of intervention. Talisman makes
no claim of statutory right to intervene.

1 law, and [] there is a relationship between the legally protected interest and the claims at issue.”
2 *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (cleaned up). The “relationship” here
3 is generally satisfied “only if the resolution of the plaintiff’s claims actually will affect the
4 applicant.” *Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998). The Ninth Circuit
5 consistently interprets this requirement as “primarily a practical guide to disposing of lawsuits by
6 involving as many apparently concerned persons as is compatible with efficiency and due
7 process.” *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 985 (2008)
8 (quoting *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (2002) (applying *United States v. City of*
9 *Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002))); *see also, Cty. of Fresno v. Andrus*, 622 F.2d 436,
10 438 (9th Cir. 1980) (cleaned up).

11 Talisman argues it has a significant protectable interest in:

12 (1) its contractual rights and obligations as created between Talisman and Ares, (2)
13 the contractual rights and obligations that TIC owes Talisman under its own
14 contractual undertakings with Talisman, and (3) the contractual rights and
15 obligations existing between Talisman and North American Casualty (TIC’s
16 parent), and Catlin Specialty Insurance Co. – TIC’s sister entity which Talisman is
17 in the process of purchasing[.]

18 Dkt. No. 24 at 5.

19 TIC argues Talisman does not have a significant protectable interest in Talisman’s
20 contractual rights and obligations pursuant to its agreements with Ares because “Talisman’s
21 contractual arrangement with Ares does not bear on the fact that TIC does not authorize Ares’
22 issuance of policies on its behalf.” Dkt. No. 32 at 5. However, as TIC states in its own briefing,
23 “Ares submits that its authority to write policies in TIC’s name[] is wholly derivative of Talisman’s
24 authority to do so.” Dkt. No. 32 at 4.

25 The Court finds Talisman has a significant protectable interest in its right to contract with
26 Ares, and a resolution of this case in TIC’s favor will hinder or eliminate this right. As a practical

1 matter, Talisman’s participation in this case will also aid the Court in resolving whether Ares is
2 authorized to write policies on TIC paper.⁴ The second requirement for intervention is thus met.

3 As to the third requirement, impairment of interest, the intervenor’s burden to show that
4 their interests may be impaired is “minimal.” *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246,
5 1253 (10th Cir. 2001) (cleaned up). “To satisfy this element of the intervention test, a would-be
6 intervenor must show only that impairment of its substantial legal interest is possible if
7 intervention is denied.” *Id.* The Ninth Circuit has emphasized “the relevant inquiry is whether the
8 [pending litigation] ‘may’ impair rights ‘as a practical matter’ rather than whether [it] will
9 ‘necessarily’ impair them. *U.S. v. City of Los Angeles, Cal.*, 288 F.3d at 401 (quoting Fed. R. Civ.
10 P. 24(a)(2)).

11 Talisman argues disposition of this action without its intervention could impair its interests
12 because “[t]here is no privity of contract between Ares and TIC. Talisman has contracts directly
13 with TIC, and based on these contracts Talisman has delegated authority to Ares. Talisman has a
14 right to assert what it believes those contracts mean and how they should be interpreted by the
15 Court.” Dkt. No. 24 at 6. In contrast, TIC argues Talisman’s rights are protected by Talisman’s
16 participation in the Louisiana case. Dkt. No. 32 at 5. TIC cites no legal authority to support this
17 argument.

18 As a practical matter, resolution of this case in TIC’s favor may impair Talisman’s rights
19 to contract with Ares or any other sub-agent under its MGA Agreement with TIC. *See Pipkin v.*
20 *Burlington N. & Sante Fe R.R. Co.*, No. C04-5591RJB, 2005 WL 8173114, at *2 (W.D. Wash.
21 July 25, 2005) (holding a proposed intervenor demonstrated its rights under a contract with
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23 ⁴ Because the Court finds Talisman has a significant protectable interest in its right to contract with Ares, the Court
24 does not reach TIC’s other arguments regarding Talisman’s interest in the MGA Agreement between Talisman and
TIC, or Talisman’s interest in contractual rights and obligations relating to Catlin. *See* Dkt. No. 24 at 5.

1 defendant could be impacted by the outcome of the case). Accordingly, Talisman has met its low
2 burden to show possible impairment of a substantial legal interest.

3 Finally, Talisman must show that its interests are not adequately represented. “The burden
4 of showing inadequacy of representation is ‘minimal’ and satisfied if the applicant can demonstrate
5 that representation of its interests ‘may be’ inadequate.” *Citizens for Balanced Use*, 647 F.3d at
6 898. “In assessing the adequacy of representation, the focus should be on the ‘subject of the
7 action,’ not just the particular issues before the court at the time of the motion.” *Sw. Ctr. for*
8 *Biological Diversity*, 268 F.3d at 823 (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525,
9 528 (9th Cir. 1983)). In evaluating adequacy of representation, the court examines three factors:

- 10 (1) Whether the interest of a present party is such that it will undoubtedly make all
of the proposed intervenor’s arguments;
- 11 (2) Whether the present party is capable and willing to make such arguments; and
- 12 (3) Whether a proposed intervenor would offer any necessary elements to the
proceeding that other parties would neglect.

13 *Arakaki*, 324 F.3d at 1086. The “most important factor” in assessing the adequacy of
14 representation is “how the interest compares with the interest of existing parties.” *Id.* “Where an
15 applicant for intervention and an existing party have the same ultimate objective, a presumption
16 of adequacy of representation arises.” *League of United Latin Am. Citizens v. Wilson*, 131 F.3d
17 1297, 1305 (9th Cir. 1997) (cleaned up). “If the applicant’s interest is identical to that of one of
18 the present parties, a compelling showing should be required to demonstrate inadequate
19 representation.” *Arakaki*, 324 F.3d at 1086; *Citizens for Balanced Use*, 647 F.3d at 898 (“To rebut
20 the presumption, an applicant must make a ‘compelling showing’ of inadequacy of
21 representation.” (quoting *Arakaki*, 324 F.3d at 1086)); *Proie v. Nat’l Marine Fisheries Serv.*, No.
22 C11-5955-BHS, 2012 WL 681676, at *2 (W.D. Wash. Feb. 28, 2012).⁵

23 ⁵ Talisman cites authority from the Eleventh Circuit to argue the presumption is weak: “in effect, it merely imposes
24 upon the proposed interveners the burden of coming forward with some evidence to the contrary.” *Clark v. Putnam*

1 In *Southwest Center for Biological Diversity*, the Ninth Circuit considered the inadequacy
2 requirement. 268 F.3d at 814. There, developers sought to intervene as defendants in a case where
3 Southwest sued a city, challenging several municipal plans as insufficiently protective of
4 endangered species. *Id.* at 816. The district court ruled the developers did not meet the inadequacy
5 of representation requirement because the developers and the City shared the same “ultimate
6 objective” of defending the municipal plans. *Id.* at 823. The Ninth Circuit reversed, holding “even
7 if the presumption applies, it is rebutted here because [the City and the developers] do not have
8 sufficiently congruent interests.” *Id.* The Ninth Circuit noted the parties’ interests diverged in
9 both motivation for seeking the ultimate objective, and in their duties related to the municipal
10 plans. *Id.* In addition, the developers “would likely offer important elements to the proceedings
11 that the existing parties would likely neglect.” *Id.* The Ninth Circuit noted “it is not [the
12 developers’] burden at this stage in the litigation to anticipate specific differences in trial strategy.
13 It is sufficient for Applicants to show that, because of the difference in interests, it is likely that
14 Defendants will not advance the same arguments as Applicants.” *Id.* at 824.

15 Here, even if the Court were to find that the presumption of adequate representation
16 applies, it is overcome. While Ares and Talisman share the ultimate objective of Ares continuing
17 to issue insurance policies, like the parties in *Southwest Center for Biological Diversity*, the two
18 have differing motivations for seeking this objective and differing duties related to the contracts at
19 issue. Talisman seeks to enforce its alleged rights under its MGA Agreement with TIC, while
20 Ares seeks to enforce its rights under its DUA with Talisman. The two parties do not share

23 *Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999). The Ninth Circuit has consistently held the presumption must be rebutted
24 by a “compelling showing” of inadequacy. However, the “compelling showing” standard refers to “identical”
interests, rather than the same ultimate objective. *Arakaki*, 324 F.3d at 1086.

1 “identical interests” in the outcome of this litigation. Talisman has made a compelling showing
2 overcoming any presumption of adequacy of representation.

3 Given the parties’ differing interests, is not “undoubtable” that Ares will make the same
4 arguments Talisman would, or that Ares is capable and willing to make such arguments in the
5 absence of Talisman’s intervention. The Court also finds that, because Talisman is the party in
6 privity with TIC, Talisman will likely offer important elements to the proceedings that Ares would
7 neglect. *Sw. Ctr. for Biological Diversity*, 268 F.3d at 823. Ares has demonstrated it has the ability
8 to produce certain documents and testimony in Talisman’s possession, and Talisman has retained
9 the same counsel as Ares at the present stage of these proceedings. However, Talisman is the party
10 who negotiated and entered the MGA Agreement and will best be able to assist the Court in
11 understanding the flow of authority from the MGA Agreement down through the Talisman-Ares
12 DUA. Accordingly, Talisman has met its burden to show representation of its interests by Ares
13 “may be” inadequate. *Id.*

14 **B. Talisman is Also Entitled to Permissive Intervention.**

15 In the alternative, the Court would permit Talisman to intervene. The Court finds Talisman
16 meets the threshold requirements for permissive intervention, and that the discretionary factors the
17 Court may consider, on balance, weigh in Talisman’s favor.

18 There are three threshold requirements for permissive intervention: timeliness, common
19 question of law or fact, and independent jurisdiction.⁶ Federal Rule of Civil Procedure 24(b)(1)(B)
20 provides, “[o]n timely motion, the court may permit anyone to intervene who: . . . has a claim or
21 defense that shares with the main action a common question of law or fact.” In addition, a court
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23 ⁶ “[T]he requirement of a legally protectable interest applies only to intervention as of right under Rule 24(a), not
24 permissive intervention under Rule 24(b).” *Emp. Staffing Servs., Inc. v. Aubry*, 20 F.3d 1038, 1042 (9th Cir. 1994).

1 must have an independent basis for jurisdiction over the applicant’s claims. *Donnelly*, 159 F.3d at
2 412. “In exercising its discretion, the court must consider whether the intervention will unduly
3 delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

4 The Court may consider factors including: “the nature and extent of the intervenors’
5 interest, . . . and whether parties seeking intervention will significantly contribute to full
6 development of the underlying factual issues in the suit and to the just and equitable adjudication
7 of the legal questions presented.” *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th
8 Cir. 1977); *Yim v. City of Seattle*, No. CV18-0736-BJR, 2018 WL 4027084, at *2 (W.D. Wash.
9 Aug. 23, 2018); *Sullivan v. Ferguson*, No. 3:22-CV-05403-DGE, 2022 WL 10428165, at *4 (W.D.
10 Wash. Oct. 18, 2022).

11 The Court finds Talisman meets the three threshold requirements for permissive
12 intervention. First, TIC does not challenge the timeliness of Talisman’s application. Second,
13 Talisman argues it has claims and defenses that share a common question of law or fact with this
14 lawsuit, namely its rights under its MGA Agreement with TIC. Dkt. No. 24 at 7. Because
15 determining whether Ares has authority to issue policies on TIC paper requires examining whether
16 Talisman appropriately represented its ability under the MGA Agreement to delegate authority,
17 the Court finds Talisman has demonstrated a common question of law or fact. Third, Talisman
18 asserts this court has an independent basis for jurisdiction over its claims on the basis of diversity
19 jurisdiction. Because TIC’s pleadings assert diversity jurisdiction and Talisman’s addition would
20 not destroy diversity, the Court finds it has independent basis for jurisdiction over Talisman’s
21 claims. Finally, the Court is not persuaded that Talisman’s intervention would unduly delay or
22 prejudice the adjudication of TIC’s rights in this case.

23 TIC challenges Talisman’s permissive intervention by arguing Talisman’s rights and
24 obligations are already being fully adjudicated in the Louisiana action, and that Talisman is

1 otherwise adequately represented by Ares. Dkt. No. 32 at 6–7. These are discretionary factors the
2 Court may consider, and not requirements for permissive intervention. Another discretionary
3 factor, “whether parties seeking intervention will significantly contribute to full development of
4 the underlying factual issues in the suit and to the just and equitable adjudication of the legal
5 questions presented,” weighs heavily in favor of permitting Talisman to intervene because, as
6 discussed above, Talisman is the party in privity with TIC. *Spangler*, 552 F.2d at 1329.
7 Accordingly, the Court concludes that Talisman has satisfied the requirements for permissive
8 intervention.

9 **C. The First-to-File Rule Necessitates a Temporary Stay of this Action.**

10 As noted above, the Court invited the parties to present argument on the impact of the
11 “first-to-file” rule at the November 6, 2023 hearing. Dkt. No. 38. A district court may raise the
12 issue of whether a stay is appropriate under the first-to-file rule *sua sponte*. *Hartford Fire Ins. Co.*
13 *v. Harleysville Mut. Ins. Co.*, 736 F.3d 255, 258 n.1 (4th Cir. 2013); *Guill v. All. Res. Partners,*
14 *L.P.*, No. 16-CV-0424-NJR-DGW, 2017 WL 1132613, at *3 (S.D. Ill. Mar. 27, 2017); *Strother v.*
15 *Hylas Yachts, Inc.*, No. 12-80283-CV, 2012 WL 4531357, at *1 (S.D. Fla. Oct. 1, 2012); *QVC,*
16 *Inc. v. Patiomats.com, LLC*, No. CIV.A. 12-3168, 2012 WL 3155471, at *3 (E.D. Pa. Aug. 3,
17 2012).

18 The Court finds this case meets the criteria for a stay under the first-to-file rule, and that a
19 stay is appropriate in this case.

20 “The first-to-file rule allows a district court to stay proceedings if a similar case with
21 substantially similar issues and parties was previously filed in another district court.” *Kohn Law*
22 *Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1239 (9th Cir. 2015). “When applying
23 the first-to-file rule, courts should be driven to maximize economy, consistency, and comity.” *Id.*
24 at 1240 (cleaned up). In determining whether to apply the rule and stay the second-filed action,

1 “[a] court analyzes three factors: chronology of the lawsuits, similarity of the parties, and similarity
2 of the issues.” *Id.*

3 **1. Chronology**

4 The parties do not dispute that the Louisiana case was filed first; the Court finds this
5 requirement is met.

6 **2. Similarity of the Parties**

7 “[T]he first-to-file rule does not require exact identity of the parties. . . . Rather, the first-
8 to-file rule requires only substantial similarity of the parties.” *Kohn*, 77 F.3d at 1240 (cleaned up).
9 “Courts have found that if the parties are not identical in the two related actions, they are
10 ‘substantially similar’ under the first-to-file rule if they represent the same interests.” *Aqua*
11 *Connect, Inc. v. SHI Int’l Corp.*, No. CV 19-05662-AB (JPR), 2019 WL 8883452, at *3 (C.D. Cal.
12 Dec. 16, 2019) (citing *Ruoey Lung Enter. Corp. v. Tempur-Pedic Int’l, Inc.*, No. SACV 09-0675
13 AG (ANx), 2009 WL 10675241, at *2 (C.D. Cal. Sept. 14, 2009)).

14 For example, in *Miller Mendel Inc. v. Alaska State Troopers*, No. 3:21-CV-0129-HRH,
15 2021 WL 3698377 (D. Alaska Aug. 19, 2021), the plaintiff filed multiple actions against different
16 parties alleging infringement of the same patent. Although there was no overlap of defendants
17 between the first and second-filed cases, the court applied *Kohn* and stayed the second-filed action.
18 *Id.* at *3. The court ruled that the parties were substantially similar because “[i]t is sufficient that
19 the plaintiffs are the same in both cases and that the defendants in both cases . . . are accused of
20 infringing the same product.” *Id.*; see also *Aqua Connect*, 2019 WL 8883452 at *3 (defendants
21 substantially similar where both accused of infringing plaintiff’s patents); *McCain v. Racing*, No.
22 07 Civ. 5729 (JSR), 2007 WL 2435170, at *2 (S.D.N.Y. Aug. 27, 2007) (two parties plainly
23 represent the same interests where one is the wholly owned subsidiary of the other); *Nova Wines,*
24 *Inc. v. Adler Fels Winery LLC*, No. C 06-6149 MHP, 2007 WL 708556, at *3 (N.D. Cal. Mar. 2,

1 2007) (parties substantially similar where legal theories and alleged conduct was “intertwined”
2 between the two actions).

3 Here, even if the Court had not granted Talisman’s motion to intervene, the Court would
4 find Talisman and Ares are substantially similar parties for the purpose of the first-to-file inquiry.
5 Like the parties in *Miller Mendel*, where both parties were accused of infringing the same patent,
6 Ares and Talisman are both accused of exceeding their authority under the TIC-Talisman MGA
7 Agreement. Moreover, the alleged conduct of Ares and Talisman is plainly intertwined. And
8 TIC’s underlying theory is the same in both cases: that Talisman exceeded its authority under the
9 MGA Agreement, causing Ares to act without proper authorization. As such, an adjudication of
10 Talisman’s rights under the MGA Agreement is clearly “probative” of Ares’s authority to issue
11 policies here. *See Nova Wines*, 2007 WL 708556, at *3 (issues in first case “probative” of issues
12 in second, warranting stay of second case).

13 This conclusion is not in conflict with the Court’s finding *supra* that Ares and Talisman
14 have sufficiently differing interests under the “adequacy of representation” intervention
15 requirement. The general guiding principles of these two inquiries differ. On the one hand, the
16 requirements for intervention are “broadly interpreted in favor of intervention” (*Citizens for*
17 *Balanced Use*, 647 F.3d at 897) and the Court is primarily guided by “practical considerations”
18 (*Southwest Center for Biological Diversity*, 268 F.3d at 818). On the other hand, when applying
19 the first-to-file rule, courts are “driven by economy, *consistency*, and *comity*.” *Kohn*, 787 F.3d at
20 1240 (emphasis added). As explained above, Ares’s and Talisman’s interests converge in that they
21 both urge the Court to interpret the MGA Agreement as allowing Talisman to delegate authority
22 to Ares and for Ares to continue issuing policies. This shared interest in, and potential to be bound
23 or have rights impaired by, the outcome of the litigation goes to the principles of consistency and
24 comity. If the Court allowed this matter to proceed concurrently with the Louisiana case, there

1 would be the risk of inconsistent findings of fact and conflicting orders. Meanwhile, the interests
2 of Ares and Talisman diverge in that they have different motivations and responsibilities for
3 participating in the litigation, and each bring important context to this proceeding due to their
4 differing relationships with TIC. These divergent interests go to whether, as a practical matter,
5 Talisman has demonstrated a basis to participate in the pending litigation.

6 In sum, the parties are sufficiently similar to satisfy the second prong of the first-to-file
7 rule.

8 **3. Similarity of the Issues**

9 Finally, the Court looks to whether there is “substantial overlap between the two suits.”
10 *Kohn*, 787 F.3d at 1241 (cleaned up). “The issues in both cases [] need not be identical, only
11 substantially similar.” *Id.* at 1240.

12 In *Kohn*, the Ninth Circuit found sufficiently similar issues when the two cases at issue
13 both concerned whether plaintiffs were entitled to the same funds.⁷ *Kohn*, 787 F.3d at 1241.
14 There, the court found the second case involved “*the issue* to be determined in the [first-filed]
15 action.” *Id.* (emphasis in original).

16 The issues in this case and the Louisiana case are substantially similar. First, TIC concedes
17 that it seeks the same relief in both cases, and that if its pending motion for preliminary injunction
18 in the Louisiana case is granted, it could moot this case. Dkt. No. 32 at 1. In opposing Talisman’s
19 motion to intervene, TIC states “TIC has separately filed suit against Talisman in the United States
20

21 ⁷ The question *Kohn* Law asks the Central District of California to resolve is at the ‘heart’ of the
22 Mississippi interpleader action — whether Noatex is entitled to the \$260,410.15. If Noatex does
23 not recover funds in the Mississippi interpleader action, *Kohn* Law will likely have no claim to
24 those funds. And, if Noatex does recover funds in the Mississippi interpleader action, *Kohn* Law
will likely recover funds. Not only does the present case involve substantially similar issues as the
Mississippi interpleader action, the present case involves *the issue* to be determined in the
Mississippi interpleader action.
Kohn, 787 F.3d at 1241 (emphasis in original).

1 District Court for the Eastern District of Louisiana, where, among other relief, TIC seeks to enjoin
2 Talisman from continuing to write or authorizing its multiple sub-agents (including Ares) to act in
3 TIC's name without TIC's authorization." *Id.* And, "that injunction should effectively preclude
4 Ares' conduct and potentially resolve [this] case." *Id.* at 2. Under that reasoning, the issues in
5 both cases are substantially similar – whether Talisman and or Ares should be enjoined from
6 issuing policies or causing policies to be issued in TIC's name.

7 Second, TIC acknowledges interpretation of the MGA Agreement is central to both cases.
8 TIC states in its reply in support of its motion for preliminary injunction "[e]ach of Ares' defenses
9 to TIC's causes of action hinges on its . . . assertion that it is authorized to issue policies in TIC's
10 name." Dkt. No. 33 at 9. As in *Kohn*, TIC asks the Court to reach the issue at the heart of the
11 Louisiana case. TIC attached the MGA Agreement as the first exhibit to its complaint. Dkt. No.
12 1, Ex. 1. In its motion for preliminary injunction, TIC states "Ares solicited and entered into
13 hundreds of insurance policies in TIC's name without authorization. . . . Ares did so by purporting
14 to act on TIC's behalf under [the MGA Agreement] entered between TIC and [Talisman]." Dkt.
15 No. 3 at 6. 1. Meanwhile TIC alleges, in its Complaint in the Louisiana case, "Talisman has . . .
16 purport[ed] to delegate its limited authority under the [MGA Agreement] with TIC to multiple
17 other 'sub-agents,' without obtaining TIC's prior requisite approval." 2:23-cv-03412-SSV-JVM
18 (E.D. La. 2023) Dkt. No. 1 at 2. Interpretation of the MGA Agreement is clearly at the heart of
19 both the Louisiana case and this case.

20 Finally, the variation between the causes of action in the two cases does not preclude a
21 finding that the issues are substantially similar.⁸ At the November 6, 2023 hearing, TIC argued
22 the claims it brings against Ares under the CPA are separate from issues related to the MGA

23
24 ⁸ TIC's claims against Ares for unjust enrichment and breach of fiduciary duty do not preclude this finding because interpretation of the MGA agreement is central to resolving both of those claims.

1 Agreement at issue in Louisiana. Dkt. No. 43 at 10-11, 14. Specifically, TIC argued this Court
2 may find it is unfair or deceptive for Ares to write policies while knowing the policies are subject
3 to dispute, and that whether Ares’s conduct is unfair or deceptive does not necessarily turn on
4 interpretation of the MGA Agreement. *Id.* at 10-11. The Court is unpersuaded. As a practical
5 matter, the Court does not see how the CPA claim can be extricated from the issue of Ares’s
6 claimed authority under the MGA Agreement, or its own perception of that authority.

7 In sum, the Court finds that the issues in the Louisiana case and this action have significant
8 overlap. Both actions allege Talisman exceeded its authority under the TIC-Talisman MGA
9 Agreement by causing Ares to issue certain insurance policies in TIC’s name. Accordingly, this
10 factor also counsels in favor of a stay.

11 **D. An Indefinite Stay is Appropriate at this Juncture.**

12 At the hearing on November 6, 2023, TIC argued Ares’s ongoing issuance of policies
13 during an indefinite stay would prejudice TIC and compound its claimed harms. Dkt. No. 43 at
14 30-31. TIC further argued that indefinite stays are disfavored. *Id.* Indeed, as a general policy, the
15 Ninth Circuit disfavors stays of indefinite duration pursuant to *Landis v. N. Am. Co.*, 299 U.S. 248
16 (1936),⁹ or when a civil case is stayed pending resolution of a related criminal matter. *See Blue*
17 *Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir.
18 2007) (citing *Keating v. Off. of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir.1995) (discussing
19 stay of a civil case pending resolution of related criminal charges); *Dependable Highway Exp.,*
20 *Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066-67 (9th Cir. 2007) (discussing a *Landis* stay).
21 However, given the considerations inherent in the decision to stay a case pursuant to the first-to-

22 ⁹ In considering a *Landis* stay, a district court weighs “the possible damage which may result from the granting of a
23 stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of
24 justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be
expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-
55).

1 file rule, the Court is not convinced that TIC will be prejudiced if this action is stayed. To the
2 contrary, TIC has acknowledged that the Louisiana action may resolve the majority (if not all) of
3 its claims against Ares. Dkt. No. 32 at 2. Given the activity on the Louisiana case docket, there
4 is no reason to assume a stay in this case would last an unreasonable amount of time. Should the
5 length of the stay approach what might be considered an unreasonable duration, TIC can move to
6 lift the stay at that juncture. *See Miller Mendel Inc.*, 2021 WL 3698377 at *6.

7 III. CONCLUSION

8 Talisman's motion to intervene is GRANTED. Dkt. No. 24. This case is STAYED
9 pending adjudication of *Texas Insurance Company v. Talisman Specialty Underwriters, Inc.*, No.
10 23-CV-03412-SSV-JVM. Within ten days of the resolution of TIC's motion for preliminary
11 injunction in the Louisiana case, the parties are ORDERED to file a joint status report containing
12 a proposed briefing schedule for any motion to lift the stay.

13
14 Dated this 28th day of November, 2023.

15 

16 _____
17 Kymberly K. Evanson
18 United States District Judge
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