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**United States District Court
Central District of California**

12 TINA KALAJIAN, individually and on
13 behalf of a class of similarly situated
14 individuals,

15 Plaintiff,

16 v.

17 RITE AID CORPORATION, a
18 Delaware Corporation, and DOES 1
19 through 100, inclusive,
20 Defendants.

Case No. 2:17-cv-06777-ODW-AGR

**ORDER GRANTING JOINT
MOTION TO STAY CASE [17]**

21 **I. INTRODUCTION**

22 Tina Kalajian (“Plaintiff”), on behalf of herself and all others similarly situated,
23 filed a suit against Rite Aid Corporation (“Defendant”) on September 14, 2017, for
24 improperly advertising, marketing, and selling an “aloe vera gel” without a detectable
25 level of aloe vera. (Compl. ¶ 20, ECF No. 1.) Another case is currently pending in
26 the Northern District of Illinois and involves similar issues. *See Beardsall v. CVS
27 Pharmacy, Inc.*, No. 1:16-cv-06103 (N.D. Ill. June 10, 2016). The parties jointly
28 request to stay this action in its entirety for six months in order to allow the *Beardsall*

1 court to rule on class certification and the *Beardsall* parties to complete fact and
2 expert discovery. (Mot. Stay 3, ECF No 17.) For the following reasons, the Court
3 **GRANTS** the parties’ Joint Motion to Stay this litigation for all purposes until six (6)
4 months from the date of this order.¹

5 **II. FACTUAL BACKGROUND**

6 Plaintiff alleges, on behalf of a class, that Rite Aid Renewal After Sun Gel
7 purports and advertises itself as containing aloe vera, but independent laboratory tests
8 show Defendant’s product contains no actual aloe vera. (Compl. ¶¶ 2–3.) Plaintiff
9 alleges claims for Breach of Express Warranty; Violations of the Consumers Legal
10 Remedies Act; Violations of the False Advertising Act; and Unlawful, Unfair and
11 Fraudulent Business Acts and Practices. (*Id.* ¶¶ 56–89); *see* Cal. Comm. Code §
12 2313; Cal. Civ. Code § 1750 *et seq.*; Cal. Bus. & Professions Code §§ 17200, *et seq.*;
13 17500, *et seq.*

14 *Beardsall* is a class action against CVS Pharmacy, Inc., Walgreen Co., Target
15 Corp., Wal-Mart Stores, Inc., and Fruit of the Earth, Inc. (Declaration of Andrew J.
16 Peterson (“Peterson Decl.”), Ex. A ¶¶ 45–49, ECF No. 17-2.) Like Rite Aid here, the
17 retailer defendants in the *Beardsall* action are also alleged to have sold aloe vera
18 products that do not have a detectable amount of aloe vera. (*Id.* ¶¶ 3–7.)

19 In both actions, the plaintiffs rely on independent laboratory testing that
20 revealed an absence of acemannan, the key compound in aloe vera. (*Id.* ¶ 102;
21 Compl. ¶ 22, 24.) The parties here contend that the discovery conducted in *Beardsall*,
22 especially the expert opinions gathered, will affect the outcome of this litigation,
23 which they maintain involves complex scientific issues. (Mot. Stay 1.) The *Beardsall*
24 court has ordered that class certification, Daubert, and dispositive motions be filed
25 with the court by May 11, 2018. (*Beardsall* Min. Order, No. 1:16-cv-06103, ECF No.

26
27 ¹ After considering the papers filed in connection with the Motion, the Court deemed the matter
28 appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.
Furthermore, since the parties request this stay jointly, there is no opposition for the Court to
consider.

1 143.) In contrast, Defendant has not yet filed a response to the initial complaint in this
2 case.

3 Recognizing that the *Beardsall* action is further progressed and addresses many
4 of the same “complex scientific issues present in the instant action,” the parties jointly
5 move the Court to stay this action for six months. (Joint Mot. 4, ECF No. 17.)

6 III. LEGAL STANDARD

7 “The power to stay proceedings is incidental to the power in every court to
8 control the disposition of the cases on its docket with economy of time and effort for
9 itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 29 U.S. 248, 254
10 (1936). The Court exercises its discretion in making such determinations, weighing
11 competing interests, and seeking to maintain an even balance. *See id.* at 254–55. This
12 exercise of discretion includes an ability to stay a case “pending resolution of
13 independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of*
14 *Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). “This rule applies whether the separate
15 proceedings are judicial, administrative, or arbitral in character, and does not require
16 that the issues in such proceedings are necessarily controlling of the action before the
17 court.” *Id.* at 863–64.

18 IV. DISCUSSION

19 To determine whether a stay should be granted, the Court considers (1) the
20 possible damage resulting from a stay; (2) the hardship or inequity which a party may
21 suffer if required to go forward; and (3) the orderly course of justice, as measured by
22 whether the stay will simplify or complicate issues, proof, and questions of law.
23 *Pamintuan v. Bristol-Myers Squibb Co.*, No. 16-CV-00254-HSG, 2016 WL 4319844,
24 at *1 (N.D. Cal. July 14, 2016) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th
25 Cir. 1962)). In this case, the balance of interests supports staying the proceeding since
26 all three of these factors weigh in favor of granting a stay.

27 A. Potential Damage Caused by Stay

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1 To determine any potential damage the stay could cause, the Court considers
2 whether the delay would cause harm to the merits of the claim or any loss of evidence.
3 *Wilson v. Frito-Lay N. Am., Inc.*, No. 12-CV-1586 SC, 2015 WL 4451424, at *2 (N.D.
4 Cal. July 20, 2015). Neither party foresees any risk of prejudice in the instant action.
5 (Joint Mot. 6.) Plaintiff alleges no concerns regarding loss of witnesses, and there is
6 no indication of any other potentially lost evidence, given the short, six-month stay.
7 Rather, the *Beardsall* case may lead to additional scientific opinion that could
8 streamline this case, saving time and money for all involved. (*Id.*) Thus, this factor
9 weighs in favor of granting a stay.

10 **B. Potential Hardship of Going Forward**

11 Courts also evaluate the hardship that would exist if the stay is *not* granted—
12 namely, whether a denial of the stay would lead to poor use of judicial resources or
13 unnecessarily duplicative discovery efforts. *See Tawnsuara Grp., LLC v. Maximum*
14 *Human Performance, LLC*, No. CV 12-07189 SJO (AGR_x), 2013 WL 12138687, at
15 *3 (C.D. Cal. Oct. 3, 2013). Much of the discovery in the *Beardsall* case is equivalent
16 to the discovery and expert opinion necessary in this case. (*See* Joint Mot. 6.) Both
17 center on products claiming to feature “aloe vera”-based ingredients, and both require
18 additional research to determine whether: 1) aloe vera is actually present in the
19 product; and 2) this finding impacts the product market. (*See id.* ¶¶ 28–31; *Beardsall*
20 Second Amended Complaint (“*Beardsall* SAC”) ¶¶ 100–13, No. 1:16-cv-06103, ECF
21 No. 90.) Moreover, this case requires consideration of issues closely related to those
22 in the *Beardsall* litigation with regard to both liability and remedies. (*See* Joint Mot.
23 5.) To consider these as novel issues when they are already being considered by the
24 *Beardsall* court would be an ineffective use of time and resources. Thus, this factor
25 also supports a stay.

26 **C. Orderly Course of Justice**

27 The third and final factor also weighs heavily in favor of granting a stay. A stay
28 should be granted where it supports the interest of justice by “prevent[ing]

1 unnecessary complication.” *Coker v. Dowd*, No. 2:13-cv-0994-JCM-NJK, 2013 WL
2 12216682, at *1 (D. Nev. July 8, 2013). Resolution of proceedings in a case that
3 provides “clear guidance largely...on point to help . . . simplify complex issues of law
4 and adequate proof” is precisely the type for which stay should be granted. *Wilson*,
5 2015 WL 4451424, at *2.

6 The parties jointly assert that “[s]taying this case would promote the orderly
7 course of justice by helping to simplify complex scientific issues in the action.” (Joint
8 Mot. 5, ECF No. 17.) Allowing for *Beardsall* to further progress would inform and
9 streamline this litigation by reference to the rulings, arguments, and scientific analyses
10 from that action. (Joint Mot. 5.) Both cases center on the level of acemannan, aloe
11 vera’s definitive compound, in the products at issue. (Compl. ¶ 22; Peterson Decl.,
12 Ex. A ¶ 102, ECF No. 17-2.) Because the *Beardsall* action has further progressed and
13 will likely address issues of class certification, summary judgment, and expert
14 testimony within the next six months, the findings and decisions reached in *Beardsall*
15 will be informative to the parties here. (Joint Mot. 5–6.) This would provide
16 beneficial context for the scientific issues to be addressed and help to avoid the
17 potential of duplicative or moot litigation. (*Id.*) Accordingly, this factor also weighs
18 heavily in favor of granting the stay.

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V. CONCLUSION

Having read and reviewed the parties' Motion to Stay (ECF No. 17), and finding good cause therefore, the Court **GRANTS** the parties' Motion, and **STAYS** this case in its entirety until **September 7, 2018**. The Court **ORDERS** the parties to file joint status reports as to the progress of *Beardsall*, explaining to the Court the need to maintain the stay in this action every 60 days, until such time as the *Beardsall* matter concludes, or a stay no longer serves the interests of justice.

IT IS SO ORDERED.

March 7, 2018



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE