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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 GAIL CLARDY, et al.,
8 Plaintiffs,
9 v.
10 PINNACLE FOODS GROUP, LLC,
11 Defendant.

Case No. 16-cv-04385-JST

**ORDER GRANTING DEFENDANT
PINNACLE FOODS GROUP, LLC'S
MOTION TO STAY PROCEEDINGS
AND DENYING MOTION TO DISMISS
AS MOOT**

Re: ECF Nos. 13, 16

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13 Before the Court is Defendant Pinnacle Foods Group, LLC's Motion to Transfer this
14 Action or, in the Alternative, to Stay Proceedings, ECF No. 13, as well as Pinnacle's Motion to
15 Dismiss, ECF No. 16. Because an earlier-filed putative class action in Illinois involves the same
16 Defendant, overlapping putative classes, and substantially similar issues, the Court will grant the
17 Motion to Stay pending a decision on class certification in the earlier lawsuit, and deny the motion
18 to dismiss as moot.

19 **I. BACKGROUND**

20 **A. Facts and Procedural History**

21 This case involves two potentially overlapping class actions against Defendant. On August
22 2, 2016, Diane Biffar filed a class action against Defendant in the Southern District of Illinois
23 ("the Biffar action"). The Biffar action alleges that Defendant engaged in "deceptive, unfair, and
24 false practices regarding its Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin
25 Mix." ECF No. 15-1 at 2. Specifically, Biffar alleges "Defendant prominently represents that the
26 Product contains 'Nothing Artificial,'" when, in fact, the product "contains synthetic, artificial,
27 and/or genetically modified ingredients." Id. Consequently, Biffar argues "Defendant is able to
28 entice consumers like [Biffar] to pay a premium for the Product" because "[n]either [Biffar] nor

1 any reasonable consumer would expect to find artificial, synthetic, and/or GMO ingredients in a
2 product labeled as containing ‘Nothing Artificial.’” Id. at 6-7. The Biffar action is brought on
3 behalf of two classes: (1) the Illinois Class and (2) the Nationwide Class. Id. at 8. The
4 Nationwide Class consists of “[a]ll citizens of all states other than Missouri¹ who purchased [the
5 Product] for personal, household, or family purposes and not for resale in the five years preceding
6 the filing of [the] Petition.” Id. It does not appear the Southern District of Illinois has determined
7 whether to certify a class in the Biffar action.

8 Plaintiffs Gail Clardy and Jennifer Rose (collectively, “Plaintiffs”) filed the instant action
9 (“the Clardy action”) on August 3, 2016, one day after the Biffar action was filed. Plaintiff Clardy
10 resides in California and Plaintiff Rose resides in Florida. The Clardy action alleges “Defendant
11 has unlawfully, negligently, unfairly, misleadingly, and deceptively represented that its . . .
12 Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix [and other products]
13 contain[] ‘Real Ingredients’ and ‘Nothing Artificial,’ despite containing unnatural ingredients that
14 are synthetic, artificial, and/or genetically modified.” ECF No. 1 at 2. The Clardy action further
15 alleges “Defendant made the deceptive presentations and omissions on the Product with the intent
16 to induce Plaintiff[s]’ and other Class members’ purchase of the Product” knowing that
17 “consumers would pay a premium for ‘Real Ingredients’ and ‘Nothing Artificial’ labeled products
18 over comparable products that are not [similarly labeled].” Id. at 13. The Clardy action is brought
19 on behalf of three classes: (1) a California Class; (2) a Florida Class; and (3) a Nationwide Class.
20 Id. at 18. The Nationwide Class consists of “all United States residents who purchased the
21 Product, for personal use and not resale, during the four-year period preceding to the date of the
22 filing of this Complaint, through and to the date Notice is provided to the Class.” Id.

23 Defendant now moves to transfer this action under the first-to-file rule or, in the
24 alternative, to stay this action under either the first-to-file rule or the primary jurisdiction doctrine.
25 See ECF No. 13. Defendant has also filed a separate Motion to Dismiss. See ECF No. 16.

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28 ¹ Another class action against Defendant is pending in the Eastern District of Missouri. See
Thornton v. Pinnacle Foods Group, LLC, No. 4:16-cv-00158-JAR; see also ECF No. 13 at 8 n.1.
The Plaintiff in Thornton is seeking class certification on behalf of Missouri consumers only.

1 Plaintiffs oppose both motions. See ECF Nos. 19 and 21.

2 **B. Request for Judicial Notice**

3 Pursuant to Federal Rule of Evidence 201(b), “[t]he court may judicially notice a fact that
4 is not subject to reasonable dispute because it: (1) is generally known within the trial court’s
5 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
6 accuracy cannot reasonably be questioned.” The Court may properly take judicial notice of
7 materials attached to the complaint and of matters of public record. Lee v. City of Los Angeles,
8 250 F.3d 668, 688-89 (9th Cir. 2001). A court “must take judicial notice if a party requests it and
9 the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). The Court takes
10 judicial notice, however, only of the existence of the document, not of the allegations or legal
11 conclusions asserted in it. See Lee, 250 F.3d at 689-90.

12 Defendant asks this Court to take judicial notice of a copy of the complaint from the Biffar
13 action, a copy of Defendant’s motion to dismiss from the Biffar action, a copy of the complaint
14 filed in another action involving similar claims against Defendant filed in the Eastern District of
15 Missouri, as well as that court’s order granting Defendant’s motion to stay pending the FDA’s
16 current evaluation of the definition of “natural” with respect to food labeling. See ECF No. 15.
17 Plaintiffs do not oppose Defendant’s request for judicial notice. Because a court “may take
18 judicial notice of proceedings in other courts . . . if those proceedings have a direct relation to
19 matters at issue,” Bias v. Moynihan, 508 F.3d 1212, 1225 (9th Cir. 2007), the Court grants
20 Defendant’s request in its entirety.

21 **II. LEGAL STANDARD**

22 **A. Motion to Transfer & First-to-File Rule**

23 “For the convenience of parties and witnesses, in the interest of justice, a district court may
24 transfer any civil action to any other district or division where it might have been brought or to
25 any other district or division to which all parties have consented.” 28 U.S.C. § 1404(a). The
26 purpose of section 1404(a) “is to prevent the waste of time, energy and money and to protect
27 litigants, witnesses, and the public against unnecessary inconvenience and expense.” Van Dusen
28 v. Barrack, 376 U.S. 612, 616 (1964) (internal quotation marks omitted). The district court has the

1 broad discretion “to adjudicate motions to transfer according to an ‘individualized, case-by-case
2 consideration of convenience and fairness.” Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29
3 (1988) (quoting Van Dusen, 376 U.S. at 622).

4 The first-to-file rule “allows a district court to transfer, stay, or dismiss an action when a
5 similar complaint has already been filed in another federal court.” Alltrade, Inc. v. Uniweld Prod.,
6 Inc., 946 F.2d 622, 623 (9th Cir. 1991). A district court examines three factors in deciding
7 whether to apply the rule: the chronology of the two actions, the identity of the parties involved,
8 and the similarity of the issues at stake. Id. at 625. In a class action, the court compares the
9 classes, and not the class representatives. Ross v. U.S. Bank Nat. Ass’n, 542 F. Supp. 2d 1014,
10 1020 (N.D. Cal. 2008). The purpose of the well-established first-to-file rule “is to promote
11 efficiency and to avoid duplicative litigation and thus it should not be lightly disregarded.”
12 Inherent.com v. Martindale-Hubbell, 420 F.Supp.2d 1093, 1097 (N.D. Cal. 2006) (citing Alltrade,
13 Inc. v. Uniweld Prod., Inc., 946 F.2d 622, 625 (9th Cir. 1991)). The rule is “not a rigid or
14 inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of
15 sound judicial administration.” Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th
16 Cir. 1982). The district court retains “[a]n ample degree of discretion” so it can apply the benefit
17 of its judicial experience. Kerotest Manufacturing Co. v. C-O-Two Fire Equipment Co., 342 U.S.
18 180, 183-84 (1952).

19 **B. Motion to Stay**

20 A court’s “power to stay proceedings is incidental to the power inherent in every court to
21 control the disposition of the causes on its docket with economy of time and effort for itself, for
22 counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). “[T]he district court
23 may exercise its discretion to dismiss a duplicative later-filed action, to stay that action pending
24 resolution of the previously filed action, to enjoin the parties from proceeding with it, or to
25 consolidate both actions.” Adams v. Cal. Dep’t of Health Servs., 487 F.3d 684, 688 (9th Cir.
26 2007). This discretionary rule also applies to class actions. See Plack v. Cypress Semiconductor,
27 864 F. Supp. 957, 959 (N.D. Cal. 1994). In deciding whether to stay proceedings, a district court
28 must weigh various competing interests, including the possible damage which may result from

1 granting a stay, the hardship a party may suffer if the case is allowed to go forward, and the
2 “orderly course of justice measured in terms of the simplifying or complicating of issues, proof,
3 and questions of law which could be expected to result from a stay.” Lockyer v. Mirant Corp.,
4 398 F.3d 1098, 1110 (9th Cir. 2005). The burden is on the movant to show that a stay is
5 appropriate. See Clinton v. Jones, 520 U.S. 681, 708 (1997).

6 **III. ANALYSIS**

7 **A. Motion to Transfer**

8 The first factor is clearly present, because the Biffar action was filed first. See ECF No. 19
9 at 9; ECF No. 22 at 7.

10 The second factor, similarity of issues, is also present. Plaintiffs’ arguments to the
11 contrary are unpersuasive. Plaintiffs argue the issues are not substantially similar because while
12 the Biffar action asserts causes of action under Illinois’ consumer protection laws as well as claims
13 for unjust enrichment and breach of express warranty, the Clardy action does not assert these same
14 causes of action and, in fact, asserts different causes of action under California’s and Florida’s
15 respective consumer protection laws. ECF No. 19 at 11. The Ninth Circuit has held, however,
16 that “[t]he issues in both cases . . . need not be identical, only substantially similar.” Kohn, 787
17 F.3d at 1240. Thus, this Court is instructed to “look at whether there is ‘substantial overlap’
18 between the two suits.” Id. at 1241. Here, the Clardy and Biffar actions substantially overlap,
19 because both actions allege that Defendant misrepresented the ingredients contained in the
20 products at issue by labeling the boxes they are sold in with either “Real Ingredients” or “Nothing
21 Artificial,” even though Defendant knew that artificial and/or unnatural ingredients were used.
22 Both cases are proceeding on similar, although not identical, consumer protection theories of
23 relief. The Court finds the substantial similarity of issues requirement is met.

24 Analyzing the third factor, similarity of parties, is slightly more complicated. The parties
25 in both cases need not be identical, only substantially similar, id. at 1240, and, in a class action,
26 the court compares the classes, not the class representatives. Ross, 542 F. Supp. 2d at 1020. In
27 neither lawsuit, however, has the court determined the question of class certification. While the
28 plaintiff in Biffar – like the plaintiff here – proposes a nationwide class, class certification has not

1 been granted or denied. The Illinois district court might certify a nationwide class, certify a class
2 or classes only within certain states, or deny certification altogether. It is therefore impossible for
3 the Court to evaluate at this juncture whether the classes are substantially similar.

4 To copy a page from the court’s analysis in Moreno v. Castlerock Farming and Transport:

5 If the class in [the Biffar action] is certified as narrow, then the
6 [Clardy] Plaintiffs can move forward to represent all other [class
7 members]. Indeed, all pre-class certification discovery received by
8 [Biffar] could be directly given to the [Clardy] Plaintiffs to save
9 time and effort If the class certified in [the Biffar action] is
10 wide, then [the Clardy action] would probably be considered
11 duplicative and subject to dismissal [or transfer]. If class
12 certification is denied for some other reason not having to do with
13 [Biffar’s] status, then [the Clardy action] may or may not be able to
14 proceed depending upon the specific circumstance This is a
15 determination that cannot yet be made. A stay in [the Clardy action]
16 pending class certification in [the Biffar action] would appear to be
17 the equitable solution.

18 No. CIV-F-12-0556 AWI JLT, 2013 WL 1326496, at *2 (E.D. Cal. Mar. 29, 2013). Because a
19 class has not yet been certified in the Biffar action, the Court concludes it is not appropriate to
20 transfer the Clardy action at this time. As did the court in Moreno, this Court will stay these
21 proceedings pending class certification in the Biffar action.

22 **B. Motion to Stay**

23 While transfer is not appropriate on these facts, a stay is. Plaintiffs will not be prejudiced
24 by a stay, but Defendant will suffer hardship and inequity if this action is not stayed. Given the
25 similarity of issues presented by both actions, proceeding with the Clardy action while the Biffar
26 action awaits class certification will not promote efficiency, will not conserve judicial resources,
27 and may produce conflicting opinions. In addition, as the Sixth Circuit recently explained,
28 “[I]itigating a class action requires both the parties and the court to expend substantial resources”
and “the most important purpose of the first-to-file rule is to conserve these resources by limiting
duplicative cases.” Baatz v. Columbia Gas Transmission, LLC, 814 F.3d 785, 791 (6th Cir. 2016).
These potential efficiency gains are particularly heightened where, as here, the class actions
involve overlapping claims and class periods. See e.g., Hill v. Robert’s Am. Gourmet Food, LLC,
No. 13-CV-00696-YGR, 2013 WL 3476801, at *5 (N.D. Cal. July 10, 2013) (holding that

1 “[s]ignificant judicial efficiency [would] be gained and conservation of resources achieved” by
2 applying the first-to-file rule where two class actions involved overlapping claims and class
3 periods and were at the same stage of litigation). Consequently, this Court will stay these
4 proceedings.

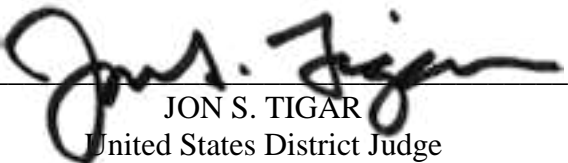
5 In light of the Court’s order staying the case, Defendant’s Motion to Dismiss is denied
6 without prejudice as moot. Defendant may refile that motion if and when litigation of the Clardy
7 action resumes.

8 **CONCLUSION**

9 The Motion to Transfer or Stay is GRANTED IN PART and the Clardy action is stayed
10 pending a determination of class certification, settlement, or entry of judgment in the Clardy
11 action. Within ten court days of any of the foregoing events, the parties are ordered to file an
12 Updated Joint Case Management Statement and a written request that the Court set a Case
13 Management Conference. In addition, the parties are also ordered to file a status report, describing
14 the status of the Biffar action, on the third Monday of each July and January.

15 IT IS SO ORDERED.

16 Dated: January 5, 2017

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19 JON S. TIGAR
United States District Judge