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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STEVEN M. GARDNER, an individual,

Plaintiff,

v.

CAFEPRESS INC., a Delaware Corporation, et al.,

Defendants.

CASE NO. 3:13-cv-1108-GPC-JLB
ORDER:
(1) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO CONSOLIDATE AND TO SET NEW SCHEDULING DATES;
[No. 3:13-cv-1108-GPC-JLB, ECF No. 100]
[No. 3:14-cv-0792-GPC-JLB, ECF No. 7]
(2) VACATING HEARING DATE

I. INTRODUCTION

Before the Court is Plaintiff Steven M. Gardner's ("Plaintiff") Motion to Consolidate and to Set New Scheduling Dates. (ECF No. 100.)¹ Defendants CafePress Inc. ("CafePress") and TellApart, Inc. ("TellApart")² (collectively, "Defendants") oppose. (ECF No. 126.)³ Plaintiff has replied to Defendants' opposition. (ECF

¹ (See No. 3:14-cv-0792-GPC-JLB, ECF No. 7.)
² TellApart is not a defendant in 3:13-cv-1108-GPC-JLB, but is a defendant in 3:14-cv-0792-GPC-JLB.
³ (See No. 3:14-cv-0792-GPC-JLB, ECF No. 21.)

1 No.131.)⁴

2 The parties have fully briefed the motion. (ECF Nos. 100, 126, 131.) The Court
3 finds the motion suitable for disposition without oral argument pursuant to Civil Local
4 Rule 7.1(d)(1). For the reasons discussed below, the Court GRANTS IN PART AND
5 DENIES IN PART Plaintiff’s Motion to Consolidate.

6 **II. BACKGROUND**

7 On May 8, 2013, Plaintiff filed a complaint alleging copyright infringement by
8 CafePress and CafePress users (*Gardner v. CafePress, Inc.* (“*Gardner I*”), No. 3:13-cv-
9 1108-GPC-JLB). (ECF No. 1.) On October 14, 2014, pursuant to this Court’s order
10 granting Plaintiff’s motion to amend, (ECF No.108), Plaintiff filed a second amended
11 complaint (“SAC”) against CafePress and CafePress users, adding a new claim and a
12 new defendant. (ECF No. 112.)

13 On April 4, 2014, Plaintiff filed a complaint alleging copyright infringement by
14 CafePress and a different CafePress user. (*Gardner v. CafePress Inc.* (“*Gardner II*”),
15 No. 3:14-cv-0792-GPC-JLB, ECF No. 1.)⁵ On September 8, 2014, Plaintiff filed a first
16 amended complaint in *Gardner II* adding TellApart as a defendant. (No. 3:14-cv-0792-
17 GPC-JLB, ECF No. 6.)

18 On September 8, 2014, Plaintiff filed a motion to consolidate. (ECF No. 100.)
19 On November 7, 2014, Defendants filed an opposition to Plaintiff’s motion. (ECF No.
20 126.) On November 21, 2014, Plaintiff filed a reply to Defendants’ opposition. (ECF
21 No. 131.) Plaintiff seeks to consolidate *Gardner I* and *Gardner II*. (ECF No. 100.)

22 **III. LEGAL STANDARD**

23 Federal Rule of Civil Procedure 42(a) grants the Court broad discretion to
24 consolidate separate actions. *Investors Research Co. v. U.S. Dist. Court for Cent. Dist.*
25 *of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). Under Rule 42(a), the Court may
26

27 ⁴ (See No. 3:14-cv-0792-GPC-JLB, ECF No. 23.)

28 ⁵ References to docket entries in this order refer to the docket entries in *Gardner I* unless explicitly stated otherwise.

1 consolidate actions that involve common questions of law or fact. FED. R. CIV. P. 42(a).
2 The Court should also consider weigh any time and effort saved by consolidation
3 against any “inconvenience, delay, or expense that it would cause.” *Huene v. United*
4 *States*, 743 F.2d 703, 704 (9th Cir.1984) (citations omitted).

5 IV. DISCUSSION

6 The parties do not dispute that *Gardner I* and *Gardner II* share common
7 questions of law and fact. (See ECF No. 100-1, at 4; ECF No. 126, at 5.) However,
8 Defendants argue three reasons why the cases should not be consolidated: (1) the
9 difference in procedural posture between the two cases, (2) the increased
10 inconvenience and cost resulting from consolidation, and (3) consolidation would
11 prejudice Defendants. (ECF No. 126, at 5–6.)

12 First, the parties dispute whether consolidation would require altering the current
13 discovery deadlines. (Compare ECF No. 131, at 1–2 with ECF No. 126, at 5.) Citing
14 *Mills v. Beech Aircraft Corp.*, 886 F.2d 758 (5th Cir. 1989), Defendants argue that
15 discovery in *Gardner I* has already closed and consolidation would cause undue delay
16 by reopening discovery in *Gardner I*. (ECF No. 126, at 5.) Plaintiff argues that, due to
17 the recent addition of a new claim and new defendant, discovery already needs to
18 extended, regardless of whether the cases are consolidated. (ECF No. 131, at 1–2.)
19 Second, Defendants argue that there will be additional expenses of another motion for
20 summary judgment and the redeposing of an expert witness. (ECF No. 126, at 6.)
21 Third, Defendants argue that consolidation would prejudice CafePress and TellApart
22 because Plaintiff’s theories of liability differ for each defendant. (*Id.*)

23 While consolidation undoubtedly would cause some delay and increased
24 expenses in *Gardner I*, the Court must weigh that against any time and effort saved by
25 consolidation. *Huene*, 743 F.2d at 704. In this case, consolidation would save
26 considerable time and effort because these two cases relate to similar alleged actions
27 of CafePress users and similar alleged responses to those actions by CafePress and
28 TellApart. Consolidation would avoid the unnecessary expense of two separate trials.

1 Moreover, any additional extension of discovery would be quite limited as the parties
2 have already engaged in extensive discovery in *Gardner I* and consolidation would
3 reduce the amount of duplicative discovery that may have been required were *Gardner*
4 *II* to proceed by itself.

5 Additionally, the Court finds that Defendants would not be prejudiced by
6 consolidation. The trier of fact in *Gardner II* would already have to allocate damages
7 amongst CafePress and TellApart if liability were found. Thus, consolidation would
8 not be the cause of any alleged “prejudice” because the alleged “prejudice” argued by
9 Defendants, (*see* ECF No. 126, at 6), exists due to *Gardner II* already having both
10 CafePress and TellApart as defendants. Accordingly, the Court finds that any
11 inconvenience or delay is outweighed by the time and expenses saved and that
12 consolidation would not prejudice Defendants.

13 Because *Gardner I* and *Gardner II* share common questions of law and fact, and
14 consolidation would reduce the duplicative efforts to try both cases separately while
15 creating minimal increased delay or expenses, consolidation of the two cases is
16 appropriate and the Court GRANTS Plaintiff’s motion as to consolidation. However,
17 the parties must file a joint motion with the magistrate judge to obtain new scheduling
18 dates and therefore the Court DENIES Plaintiff’s motion as to obtaining new
19 scheduling dates.

20 V. CONCLUSION AND ORDER

21 For the reasons stated above, **IT IS HEREBY ORDERED** that:


- 22 1. Plaintiff’s Motion to Consolidate, (ECF No. 100), is **GRANTED** as to
23 consolidation and **DENIED** as to scheduling dates;
- 24 2. *Gardner I*, No. 3:13-cv-1108-GPC-JLB, and *Gardner II*, No. 3:14-cv-
25 0792-GPC-JLB, are **CONSOLIDATED**;
- 26 3. The parties are directed to file a joint motion with the magistrate judge to
27 obtain new scheduling dates on or before **January 16, 2015**;
- 28 4. All new filings shall be filed in *Gardner I*, No. 3:13-cv-1108-GPC-JLB;

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5. Plaintiff is directed to file a consolidated complaint on or before **February 6, 2015**,⁶ and

6. The hearing set for December 19, 2014, is **VACATED**.

DATED: December 16, 2014


HON. GONZALO P. CURIEL
United States District Judge

⁶ The Court has set a deadline that follows the anticipated ruling on CafePress's pending motion to dismiss, (ECF No. 122), so as to avoid the possibility of Plaintiff having to file a multiple consolidated complaints depending on the outcome of said motion.