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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH FUENTES, individually,
and on behalf of herself and others
similarly situated,

Plaintiff,

v.

MAXIM HEALTHCARE SERVICES,
INC., a Maryland corporation; and DOES
1 through 50 inclusive,

Defendant.

Case No.: 3:17-cv-2178-CAB-(NLS)

**ORDER ON MOTION TO
TRANSFER
[Doc. No. 3]**

This matter comes before the Court on the parties’ Joint Motion to Transfer Case to the Central District of California Pursuant to the First-to-File Rule. [Doc. No. 3.] For the reasons set forth below, the Court **GRANTS** the joint motion.

On October 24, 2017, Plaintiff Elizabeth Fuentes filed a putative class action complaint against Defendant in the Southern District of California (the “*Fuentes* Action”) alleging various wage and hour claims against the Defendant, including failure to pay overtime and minimum wages and related claims, along with a claim for violation of the Private Attorneys General Act (“PAGA”). [Doc. No. 1.]

1 On January 15, 2016, Plaintiff Maria Duran filed a putative class action complaint
2 (the “*Duran* Action”) against Defendant in Los Angeles Superior Court, alleging a single
3 cause of action for violation of PAGA. Defendant removed the action to the Central
4 District of California on February 9, 2017. *See* Case No. 2:17-cv-01072-AB-E, Doc. No.
5 1. Subsequently, on August 23, 2017, a Third Amended Complaint was filed in the *Duran*
6 Action. The third amended complaint alleges putative class claims against Defendant for
7 failure to pay minimum wages, overtime wages, failure to provide meal and rest periods,
8 violation of Labor Code sections 201-203, unfair competition, and a PAGA claim. *See id.*
9 at Doc. No. 17. On October 27, 2017, Plaintiff Duran filed a notice of pendency of other
10 actions with the Central District, informing the Court of the related *Fuentes* Action. [Doc
11 No. 3 at 6-8.]

12 After becoming aware of the similarities between their suits, Plaintiffs Fuentes and
13 Duran agreed to consolidate their cases and “request transfer of this case to the Central
14 District under Case Number. 2:17-cv-01072 because the actions are related within the
15 meaning of Local Civil Rule 40.1e and g.” [Doc. No. 3 at 3:27-4:3.] Further, the parties in
16 the *Fuentes* Action stipulated, agreed and jointly moved that it should be transferred in its
17 entirety to the United States District Court for the Central District of California pursuant
18 to the first-to-file rule so that it can be consolidated with the *Duran* Action. [*Id.* at 3-4.]

19 Under the first-to-file rule district courts have discretion to dismiss, stay, or transfer
20 a case to another district. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95. (9th
21 Cir. 1982). The rule “recognize[s] [the] doctrine of federal comity which permits a district
22 court to decline jurisdiction over an action when a complaint involving the same parties
23 and issues has already been filed in another district.” *Id.* However, it is “not a rigid or
24 inflexible rule to be mechanically applied but rather to be applied with a view to the dictates
25 of sound judicial administration.” *Id.* at 95. In deciding whether to apply the first-to-file
26 rule, courts analyze three factors, namely: “the chronology of the lawsuits, similarity of the
27 parties, and similarity of issues.” *Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787
28 F.3d 1237, 1240 (9th Circuit). If the rule applies, the court in which the second suit was


1 filed may transfer, stay or dismiss the proceeding in order to allow the court in which the
2 first suit was filed to decide whether to try the case. *Alltrade, Inc. v. Uniweld Prods., Inc.*,
3 946 F.2d 622, 628-29 (9th Cir. 1991).

4 Upon consideration of the factors to be contemplated in deciding whether to apply
5 the first to file rule, the Court finds they weigh in favor of transfer of the *Fuentes* Action
6 to the Central District. Here, Plaintiff Duran filed her lawsuit over a year before Plaintiff
7 Fuentes, with the governing complaint in the Central District being filed only a couple of
8 months before the complaint filed in the *Fuentes* Action. Furthermore, Plaintiff Fuentes
9 stipulation to join the Central District suit will result in all parties being present in the
10 *Duran* Action. Additionally, the action in the Central District will resolve the myriad of
11 related, if not identical, labor and employment issues raised in both actions.

12 In light of the above, and the parties in the *Fuentes* action joining in the current
13 motion, the Court chooses to apply the first-to-file rule. According, the Court **GRANTS**
14 the joint motion and **TRANSFERS** this action to the Central District. Upon transfer, the
15 parties may request permission from the Honorable Andre Birotte Jr., to consolidate this
16 matter with the *Duran* action.

17 **IT IS SO ORDERED.**

18 Dated: December 8, 2017

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21 Hon. Cathy Ann Bencivengo
22 United States District Judge
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