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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH DANG d/b/a LAW OFFICE OF
JOSEPH DANG, an individual,

Plaintiff,

v.

DAVID PONTIER, an individual;
TEOCO Corporation Group Benefit Plan,
a self-funded group health plan; TEOCO
Corporation, a Delaware Corporation;
UMR Inc., a Delaware Corporation; Glenn
C. Nusbaum, an individual; Paul E. Kim,
MD Inc., A California corporation; Kevin
Yoo, an individual,

Defendants.

Case No.: 19CV1519-GPC(AHG)

**ORDER GRANTING
COUNTERDEFENDANT DANG’S
MOTION TO ENJOIN FURTHER
PROSECUTION OF LATER FILED
SUIT
[Dkt. No. 133.]**

Before the Court is Counterdefendant Dang’s motion to enjoin further prosecution of a later filed suit in the District of Nevada. (Dkt. No. 133.) Pontier filed an opposition. (Dkt. No. 144.) No reply was filed. Based on the reasoning below, the Court GRANTS Dang’s motion to enjoin the action in the District of Nevada.

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Procedural Background

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2 On August 13, 2019, Plaintiff Joseph Dang d/b/a/ Law Office of Joseph Dang
3 (“Dang”) filed a complaint in interpleader, pursuant to 28 U.S.C. § 1335, against
4 Defendants David Pontier (“Pontier”), proceeding pro se, TEOCO Corporation Group
5 Benefit Plan, TEOCO Corporation as Plan Sponsor, UMR Inc., Glenn Nusbaum, D.C.
6 (“Nusbaum”), Paul E. Kim, M.D. Inc. (“Kim”), and Kevin Yoo, M.D (“Yoo”).¹ (Dkt.
7 No. 1, Compl.) Plaintiff was in possession of \$32,764.62 in the name of David Pontier, a
8 former client, representing funds remaining from a personal injury settlement. (*Id.* ¶¶ 12,
9 13.) All Defendants made conflicting demands upon Plaintiff for the funds. (*Id.* ¶¶ 15-
10 20.) On August 22, 2019, an order for interpleader deposit was filed and \$32,764.62 was
11 deposited into the Court’s Interest-Bearing Registry Account and invested in the Court
12 Registry Investment System. (Dkt. No. 4.) On February 28, 2020, the Court denied
13 Pontier’s motion to dismiss the interpleader for failure to serve the complaint and
14 summons. (Dkt. No. 39.) On March 10, 2020, Pontier filed his answer to the
15 interpleader complaint. (Dkt. No. 46.) Defendants Nusbaum, Kim and Yoo did not file
16 answers to the interpleader complaint. On April 28, 2020, Defendants TEOCO
17 Corporation Group Benefit Plan, TEOCO Corporation, and UMR Inc. were dismissed by
18 way of a joint motion to dismiss. (Dkt. Nos. 60, 63.) On June 25, 2020, entry of default
19 was entered against Nusbaum, Kim and Yoo. (Dkt. No. 78.) On July 22, 2020, the Court
20 granted Pontier’s motion for default judgment on the interpleader complaint as to
21 Defendants Nusbaum, Kim and Yoo but denied Pontier’s request for damages as
22 premature. (Dkt. No. 98.) Recently, on December 15, 2020, the Court granted Dang’s
23 motion for interpleader discharge of Dang and disbursement of the interpleader funds to
24 Pontier. (Dkt. No. 152.)
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28 ¹ The Court notes that on August 9, 2018, Dang filed an interpleader action in this Court but voluntary dismissed it on June 12, 2019. (Case No. 18cv1869-LAB(BGS), Dkt. Nos. 1, 7.)

1 On January 15, 2020, Pontier, proceeding pro se, filed a counterclaim alleging
2 causes of action for conversion, fraud, breach of contract, and legal malpractice against
3 Dang as well as claims of medical fraud and medical malpractice against Dang, Kim,
4 Nusbaum, and Yoo. (Dkt. No. 9.) On February 7, 2002, Pontier filed a supplemental
5 counterclaim alleging violations of the Federal Fair Debt Collection Practices Act and/or
6 California's Rosenthal Fair Debt Collection Practices Act against Dang, Kim, Yoo, and
7 Nusbaum and another count of fraud against Dang. (Dkt. No. 28.) Dang filed an answer
8 to the counterclaim and the supplemental counterclaim. (Dkt. Nos. 27, 36.) Kim, Yoo
9 and Nusbaum did not respond.

10 On May 29, 2020, the Court denied Pontier's motion for leave to amend his
11 counterclaim seeking to add JP Morgan Chase Bank, Inc. ("JP Morgan Chase"), Farmers
12 Insurance, Inc. ("Farmers") and GEICO Insurance, Inc. ("GEICO") as defendants. (Dkt.
13 No. 70.) Because Pontier failed to provide any factual support or allege any proposed
14 causes of action against these proposed defendants, the Court concluded that leave to
15 amend would be futile. (*Id.*) On July 6, 2020, Pontier filed a motion for leave to file an
16 amended counterclaim based upon new evidence as well as motions for joinder of J.P.
17 Morgan Chase, GEICO and Farmers under Federal Rule of Civil Procedure ("Rule")
18 19(a). (Dkt. Nos. 89, 91, 93, 95.) On October 8, 2020, the Court granted Pontier's
19 motion for leave to file an amended counterclaim by October 23, 2020. (Dkt. No. 126 at
20 7.) It concluded "under Rule 15(a) and Rule 20, the Court GRANTS Pontier's motions
21 for reconsideration and GRANTS him leave to file an amended counterclaim to add JP
22 Morgan Chase, GEICO and Farmers as defendants in the counterclaim." (*Id.*) On
23 October 29, 2020, Pontier filed a Notice to Withdraw Request to Join Parties indicating
24 he did not seek to add the J.P. Morgan Chase, GEICO and Farmers as defendants in the
25 counterclaim as he decided to seek relief against them in another court. (Dkt. No. 132.)
26 It appears he filed his complaint in the District of Nevada.

27 On August 5, 2020, Pontier filed a complaint in the District of Nevada against
28 GEICO, Farmers, JP Morgan Chase, Dang, Phia Group, Inc., Nussbaum, Yoo, Kim, the

1 State Bar of California and the State of California. (*Pontier v. Geico*, 20cv1446-RFB-
2 BNW, D. Nev.) The Nevada complaint’s heading states “COMPLAINT FOR
3 CONVERSION, BAD FAITH, FRAUD”. (*Id.*, Dkt. No. 1, Compl.) Pending in the
4 District of Nevada is a motion to dismiss or motion to transfer filed by JP Morgan Chase
5 and GEICO. (*Id.*, Dkt. Nos. 7, 9.) The motions are not fully briefed. On December 2,
6 2020, Pontier filed a motion for voluntary dismissal of Kim, Yoo and Nusbaum. (*Id.*,
7 Dkt. No. 18.)

8 Dang filed the instant motion to enjoin prosecution of the case in the District of
9 Nevada. (Dkt. No. 133.) Pontier filed an opposition but does not address issues raised in
10 Dang’s motion or address the legal standard for the first to file rule. (Dkt. No. 144.)

11 Discussion

12 A. Motion to Enjoin Based on First to File Rule

13 The first-to-file rule is a “recognized doctrine of federal comity which permits a
14 district court to decline jurisdiction over an action when a complaint involving the same
15 parties and issues has already been filed in another district.” *Pacesetter Sys., Inc. v.*
16 *Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) (citing *Church of Scientology of Cal.*
17 *v. U.S. Dep’t of Army*, 611 F.2d 738, 749 (9th Cir. 1979)). It was developed to “serve[]
18 the purpose of promoting efficiency well and should not be disregarded lightly.”
19 *Alltrade, Inc. v. Uniweld Prod., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991) (quoting *Church*
20 *of Scientology*, 611 F.2d at 750). The first-to-file rule “allows a district court to transfer,
21 stay, or dismiss an action when a similar complaint has already been filed in another
22 federal court.” *Id.* at 623. In determining the applicability of the first-to-file rule, courts
23 look to three factors: (1) the chronology of the lawsuits, (2) the similarity of the parties,
24 and (3) the similarity of the issues. *See id.* at 625.

25 Under the first to file rule, “when cases involving the same parties and issues have
26 been filed in two different districts, the second district court has discretion to transfer,
27 stay, or dismiss the second case in the interest of efficiency and judicial economy.”
28 *Cedars-Sinai Medical Center v. Shalala*, 125 F.3d 765, 769 (9th Cir. 1997). However,

1 the Ninth Circuit has held that “[w]hen a district court has jurisdiction over all parties
2 involved, it may enjoin later filed actions.” *Decker Coal Co. v. Commonwealth Edison*
3 *Co.*, 805 F.2d 834, (9th Cir. 1986) (citing *United States v. Oregon*, 657 F.2d 1009, 1016
4 n. 17 (9th Cir. 1981) (“When a district court has jurisdiction over all parties involved, it
5 may enjoin the commission of acts outside of its district.”) and *Seattle Totems Hockey*
6 *Club, Inc. v. Int’l Hockey League*, 652 F.2d 852, 854-56 (9th Cir. 1981), *cert. denied sub*
7 *nom.*, *Northwest Sports Enters. v. Seattle Totems Hockey Club*, 457 U.S. 1105 (1982) (“A
8 federal district court with jurisdiction over the parties has the power to enjoin them from
9 proceeding with an action in the courts of a foreign country, although the power should
10 be ‘used sparingly.’”)); *see also Laboratory Corp. of America Holdings v. Chiron Corp.*,
11 384 F.3d 1326, 1332-33 (Fed. Cir. 2004) (upholding injunction of later-filed infringement
12 claim so that first-filed declaratory judgment action might proceed); *Terra Intern’l, Inc.*
13 *v. Mississippi Chem. Corp.*, 896 F. Supp. 1468, 1476 (N.D. Iowa 1995) (“within the
14 context of the “first-filed rule,” courts have held that a district court has the power to
15 enjoin proceedings involving the same parties and the same issues brought in another
16 forum.”); *Mentor Graphics Corp. v. Trimeter Technologies Corp.*, 739 F. Supp. 542, 544
17 (D. Or. 1990) (“A federal court can also enjoin the prosecution of an action where the
18 same issues are presented in another federal court.”).

19 **1. Chronology of the Lawsuits**

20 This action was filed in August 2019 and the counterclaim was filed in January
21 2020, while the Nevada action was filed a year later in August 2020. Therefore, this is
22 the first filed case.

23 **2. Similarity of the Parties**

24 The Ninth Circuit has recognized that the “first-to-file rule does not require the
25 exact identity of the parties” but requires “only substantial similarity of parties.” *Kohn*
26 *Law Group, Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d 1237, 1240 (9th Cir.
27 2015).

28

1 Both cases involve Pontier, Dang, Kim, Nusbaum and Yoo. While Pontier filed a
2 motion for voluntary dismissal of Kim, Nusbaum, and Yoo in the Nevada case, it has not
3 yet been granted. (*Pontier v. Geico*, Case No. 20cv1446-RFB-BNW, D. Nev., Dkt. No.
4 18.) Excluded from this action are JP Morgan Chase, GEICO, Famers, Phia Group, Inc.,
5 the State of California and the California State Bar. While the parties are not identical,
6 they are somewhat similar as they both include Pontier, Dang, Kim, Nusbaum and Yoo.
7 *See Pacific Coast Breaker, Inc. v. Conn. Elec., Inc.*, Civ. No. 10–3134 KJM EFB, 2011
8 WL 2073796, at * (E.D. Cal. May 24, 2011) (“exact identity is not required to satisfy the
9 first-to-file rule. The rule is satisfied if some [of] the parties in one matter are also in the
10 other matter, regardless of whether there are additional, unmatched parties in one or both
11 matters.”).

12 **3. Similarity of the Issues**

13 The Ninth Circuit has held that the issues in both cases do not need to be identical
14 but only “substantially similar.” *Kohn Law Group, Inc.* 787 F.3d at 1240-41. The Ninth
15 Circuit looks at whether there is “substantial overlap” between the two cases. *Id.* at 1241;
16 *see also Red v. Unilever United States, Inc.*, No. 09-07855 MMM (AGRX), 2010 WL
17 11515197, at *5 (C.D. Cal. Jan. 25, 2010) (“[T]he first-to-file rule does not require
18 identical issues, so long as the actions are substantially similar or involve substantial
19 overlap.”); *Pedro v. Millennium Prod., Inc.*, No. 15-CV-05253-MMC, 2016 WL
20 3029681, at *5 (N.D. Cal. May 27, 2016) (“[W]here claims in the earlier and later-filed
21 lawsuits implicate ‘common fact[s]’ . . . , courts have found those lawsuits present similar
22 issues.”) (citing *Adoma*, 711 F. Supp. 2d at 1149); *Bozic v. Uijl*, No. 16-CV-733-
23 BAS(MDD), 2017 WL 432878, at *6 (S.D. Cal. Jan. 31, 2017) (finding test satisfied
24 where claims “substantially overlapped”).

25 Here, the facts and issues in this case are substantially similar to the facts and
26 issues in the Nevada case. They both arise from Pontier’s claim that Dang, his former
27 attorney, acted improperly in disbursing the settlement funds that he received in his
28 personal injury action filed in San Diego, CA. He claims that Dang disbursed settlement

1 funds to himself and refused to disburse the remaining amounts to Pontier within six
2 weeks of receiving the funds. While Pontier adds additional facts to support his claims,
3 the allegations all arise from Dang's representation of Pontier in his personal injury
4 action. Because the issues substantially overlap in both cases, the similarity of the issues
5 factor has been met.

6 **4. Exceptions to the First to File Rule**

7 There are three exceptions to the application of the first-to-file rule: (1) bad faith;
8 (2) anticipatory suit; and (3) forum shopping. *See Alltrade*, 946 F.2d at 628. Pontier and
9 Dang do not allege and it does not appear to the Court that any of these exceptions apply
10 to this case.

11 In his notice of withdrawal to join parties, Pontier argues he filed the case in
12 Nevada because he was concerned that the statute of limitations would run against JP
13 Morgan Chase and GEICO if he waited for the Court's ruling on his motion to amend the
14 counterclaim. (Dkt. No. 132.) However, he has not provided legal authority that
15 avoiding the running of the statute of limitations is an exception to the first to file rule.
16 He could have sought relief in this Court if he had concerns about any statute of
17 limitations issue.

18 Dang acknowledges that Pontier also argues inconvenience and that due to
19 COVID-19 and his physical limitations due to his spinal injury traveling to the Southern
20 District of California will be high risk and difficult for him. However, due to COVID-19,
21 the Court allows parties to appear at hearings telephonically or by video conference;
22 therefore, any hardships are minimized and do not overcome the concerns of judicial
23 economy, avoiding inconsistent rulings and comity if two cases on similar facts and
24 issues were to proceed in two different courts.

25 The Court notes that this case has been litigated for over a year and summary
26 judgment motions have been fully briefed while the case in Nevada is only in the
27 beginning stages as answers have not yet been filed. In that case, there are also two
28 motions to dismiss for failure to state a claim or alternatively, motion to transfer the case

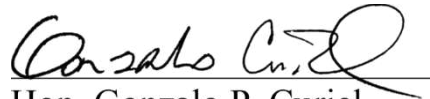
1 to this district. Judicial economy, consistency and comity require that the first to file rule
2 apply in this case. *Kohn*, 787 F.3d at 1240 (“When applying the first-to-file rule, courts
3 should be driven to maximize economy, consistency, and comity.”). Accordingly, the
4 Court concludes the first to file rule applies and enjoins the prosecution of case in the
5 District of Nevada.

6 **Conclusion**

7 Based on the reasoning above, the Court GRANTS Dang’s motion to enjoin the
8 case in the District of Nevada under the first to file rule.

9 IT IS SO ORDERED.

10 Dated: December 18, 2020

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12 Hon. Gonzalo P. Curiel
13 United States District Judge
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