

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 14-cv-02031-PAB-KLM

AVENUE CAPITAL MANAGEMENT II, L.P., a Delaware limited partnership,
AVENUE INTERNATIONAL MASTER, L.P., a Cayman Islands exempted limited
partnership,
AVENUE INVESTMENTS, L.P., a Delaware limited partnership,
AVENUE SPECIAL SITUATIONS FUND VI (MASTER), L.P., a Delaware limited
partnership,
MANAGED ACCOUNTS MASTER FUND SERVICES-MAP10, a sub-trust of an
umbrella unit trust constituted by a trust deed governed by the laws of Ireland,
AVENUE-CDP GLOBAL OPPORTUNITIES FUND, L.P., a Cayman Islands exempted
limited partnership,
AVENUE SPECIAL OPPORTUNITIES CO-INVESTMENT FUND I, L.P., a Delaware
limited partnership,
AVENUE SPECIAL OPPORTUNITIES FUND I, L.P., a Delaware limited partnership,
DRAWBRIDGE SPECIAL OPPORTUNITIES FUND L.P., a Delaware limited
partnership,
DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LTD, a Cayman Islands company,
FCI HOLDINGS I LTD, a Cayman Islands company,
FCI HOLDINGS II LTD, a Cayman Islands company,
FCOF II UB SECURITIES LLC, a Delaware limited liability company,
FCOF UB INVESTMENTS LLC, a Delaware limited liability company,
FTS SIP L.P., a Jersey limited partnership,
PANGAEA CLO 2007-1 LTD, a Cayman Islands company,
SARGAS CLO I LTD, a Cayman Islands company,
WORDEN MASTER FUND II L.P., a Cayman Islands exempted limited partnership,
and
WORDEN MASTER FUND L.P., a Cayman Islands exempted limited partnership,

Plaintiffs,

v.

RICHARD F. SCHADEN, an individual,
RICHARD E. SCHADEN, an individual,
FREDERICK H. SCHADEN, an individual,
GREG MACDONALD, an individual,
DENNIS `SMYTHE, an individual,
ANDREW R. LEE, an individual,
PATRICK E. MEYERS, an individual,
JOHN M. MOORE, an individual,
THOMAS RYAN, an individual, and

CONSUMER CAPITAL PARTNERS LLC a/k/a Cervantes Capital LLC, a Delaware limited liability company,

Defendants.

ORDER

This matter is before the Court on the Unopposed Joint Motion to Consolidate and Stay [Docket No. 12] filed jointly by the parties. The parties seek an order consolidating this case with a related case, *Schaden v. Avenue Capital Management II, L.P. & Fortress Investment Group, LLC (Schaden)*, 14-cv-02119-REB-MJW, pending in this district before Judge Robert E. Blackburn. Docket No. 12 at 2. The parties also appear to request that *Schaden* be stayed. *Id.* After review of the pleadings in each of these cases, the Court concludes that consolidation is appropriate under Federal Rule of Civil Procedure 42(a).

I. BACKGROUND

On July 22, 2014, plaintiffs filed the complaint in this action. Docket No. 1. Plaintiffs bring claims against defendants, including Richard F. Schaden, for violation of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and § 78t(a), in connection with defendants' management of QCE, LLC, a company that conducted business as Quiznos. *Id.* at 3 n.1, 13.

In *Schaden*, plaintiff Richard F. Schaden seeks declaratory relief to enforce mutual releases and covenants not to sue against Avenue Capital Management II, L.P., a plaintiff in the present case, and Fortress Investment Group, LLC, an affiliate of plaintiffs in the present case. Docket No. 12 at 3, ¶ 2; *see also Schaden*, Docket No. 3

at 1-2, 4.

II. MOTION TO CONSOLIDATE

The Court first turns to that portion of the parties' motion that seeks consolidation. Rule 42(a) of the Federal Rules of Civil Procedure provides that, "[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). Pursuant to Local Rule 42.1, the judge assigned to the lowest numbered case decides whether consolidation is warranted. D.C.COLO.LCivR 42.1. The decision whether to consolidate actions involving common questions of law or fact is committed to the sound discretion of the district court. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978). The purpose of Rule 42(a) is "to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Breaux v. American Family Mut. Ins. Co.*, 220 F.R.D. 366, 367 (D. Colo. 2004) (quoting 9 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 2381 at 427 (2nd ed. 1995)). Therefore, the Court will consider both judicial economy and fairness to the parties in exercising its discretion under Rule 42(a). See *Harris v. Illinois-California Express, Inc.*, 687 F.2d 1361, 1368 (10th Cir. 1982).

Both cases involve common questions of fact concerning Richard F. Schaden's and the other defendants' management of QCE, LLC. The parties argue that the mutual releases and covenants not to sue at issue in *Schaden* will also be at issue in the present case. After reviewing the pleadings in both cases, the Court finds no

reason to conclude otherwise. Moreover, the parties in *Schaden* are either parties in this case or are affiliated with parties in this case. Thus, the Court finds that the cases involve common question of law and fact. *Avenue Capital Management II, L.P. et al. v. Richard F. Schaden et al.*, No. 14-cv-02031-PAB-KLM, and *Schaden v. Avenue Capital Management II, L.P. & Fortress Investment Group, LLC*, 14-cv-02119-REB-MJW, will be consolidated.

III. MOTION TO STAY

Having determined that consolidation is appropriate, the Court will refer to the magistrate judge that portion of the parties' motion which seeks a stay.

IV. CONCLUSION

Accordingly, it is

ORDERED that the Unopposed Joint Motion to Consolidate and Stay [Docket No. 12] is **GRANTED** in part as indicated in this order. It is further

ORDERED that the portion of the parties' motion which seeks a stay is referred to Magistrate Judge Kristen L. Mix. It is further

ORDERED that, pursuant to Fed. R. Civ. P. 42(a) and D.C.COLO.LCivR 42.1, Civil Action Nos. 14-cv-02031-PAB-KLM and 14-cv-02119-REB-MJW shall be consolidated for all purposes. It is further

ORDERED that, as of the date of this Order, all future pleadings and other filings shall be filed in this case only and shall be captioned as shown below:

Civil Action No. 14-cv-02031-PAB-KLM
(Consolidated with Civil Action No. 14-cv-02119-PAB-KLM)

AVENUE CAPITAL MANAGEMENT II, L.P., a Delaware limited partnership, et al.,
Plaintiffs,

v.

RICHARD F. SCHADEN, an individual, et al.,
Defendants.

RICHARD F. SCHADEN,
Plaintiff,

v.

AVENUE CAPITAL MANAGEMENT II, L.P., and
FORTRESS INVESTMENT GROUP, LLC,
Defendants.

DATED October 7, 2014.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge