

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RETAIL MANAGEMENT SOLUTIONS,
L.L.C.,

Plaintiff,

v.

HARTFORD FIRE INSURANCE
COMPANY,

Defendant.

CASE NO. C13-5246 RBL

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS IN FAVOR
OF FIRST-FILED ACTION AND
GRANTING DEFENDANT'S
ALTERNATIVE MOTION TO STAY

THIS MATTER comes before the court on Defendant Hartford's motion to dismiss in favor of their first-filed action. Hartford is the plaintiff in a similar action filed in United States District Court for the District of Minnesota, filed March 29, 2013. Three days later, Plaintiff (and defendant in the other case) Retail Management Solutions, L.L.C. filed this action.

Hartford argues that because the Minnesota action was filed first, this action should be dismissed in accordance with the "first-to-file" rule. The first-to-file rule permits a district court to decline jurisdiction over an action when a complaint involving the same issues and parties has already been filed in a court with concurrent jurisdiction. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) (citing *Church of Scientology of Calif. v. U.S. Dep't of the*

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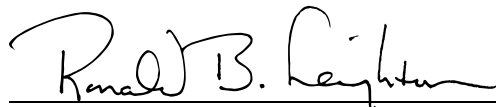
1 *Army*, 611 F.2d 738, 749 (9th Cir. 1979); *Great N. Ry. Co. v. Nat'l R.R. Adjustment Bd.*, 422
2 F.2d 1187, 1193 (7th Cir. 1970)).

3 There are, however, exceptions to this general rule. A court will not apply the first-to-file
4 rule when there is evidence of bad-faith, anticipatory suit, or forum shopping. *Z-Line Designs,*
5 *Inc. v. Bell'O Int'l, L.L.C.*, 218 F.R.D. 663, 665 (N.D. Cal. 2003). Further, a court may refuse to
6 apply the first-to-file rule if the balance of convenience weighs in favor of the latter-filed action.
7 *Id.*

9 In this case, two or more exceptions to the first-to-file rule potentially apply.
10 Nevertheless, judicial discretion cautions against accepting the second-filed action at this time.
11 *See Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 628 (9th Cir. 1991) ("The most basic
12 aspect of the first-to-file rule is that it is discretionary."). Rather, given the uncertain status of the
13 Minnesota action, and the potential for statute of limitations problems to arise, the prudent course
14 of action is to stay this proceeding pending the outcome of the Minnesota action. *See, e.g.,*
15 *Alltrade*, 946 F.2d at 629 (finding that in cases where the first-filed action "presents a likelihood
16 of dismissal," the second-filed action should be stayed, not dismissed).

18 Accordingly, Hartford's motion to dismiss in favor of the first-filed action is DENIED,
19 but their alternative motion to stay these proceedings, pending the outcome pending Motions in
20 the Minnesota action, is GRANTED.
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22 Dated this 10th day of September, 2014.

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25 RONALD B. LEIGHTON (as authorized/dn)
26 UNITED STATES DISTRICT JUDGE
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