

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 21-61970-CIV-MARTINEZ

CARMIT COHEN, on behalf of herself and all
others similarly situated consumers,

Plaintiff,

v.

GC SERVICES LIMITED PARTNERSHIP,

Defendant.

ORDER GRANTING MOTION TO TRANSFER

THIS CAUSE came before the Court upon Defendant’s Motion to Transfer (“Motion”). (ECF No. 7). After careful consideration of the Motion, Plaintiff’s response in opposition, (ECF No. 8), and Defendant’s reply, (ECF No. 9), the Court finds that the Motion is **GRANTED**.

Defendant seeks a transfer of this case to the Middle District of Florida under the first-filed rule because there is an earlier-filed class action in the Middle District containing similar allegations against the same defendant. (*See* ECF No. 7, at 2 (citing *Joseph Frangione v. GC Services Ltd. P’ship*, Case No. 8:21-cv-01193-MSS-AAS (M.D. Fla. May 17, 2021)).

“Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-field rule.” *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005); *see Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa.*, 713 F.3d 71, 78 (11th Cir. 2013) (“[W]hen parties have instituted competing or parallel litigation in separate courts, the court initially seized of the controversy should hear the case.”). Federal courts have long recognized

that the principle of comity requires federal district courts to exercise care to avoid interference with each other's affairs." *Young v. West Publ'g Corp.*, No. 09-22426-CIV, 2010 WL 11597583, at *1 (S.D. Fla. Ja. 6, 2010) (quotation marks omitted). The purpose of the first-filed rule is to avoid the waste of judicial resources, inconsistent rulings, and piecemeal litigation. *Strother v. Hylas Yachts, Inc.*, No. 12-80283-CV, 2012 WL 4531357, at *1 (S.D. Fla. Oct. 1, 2012). The Court is afforded "an apple degree of discretion" in applying the first-filed rule. *Id.*

When applying the first-filed rule, the Court should consider the following elements: (1) the chronology of events; (2) the similarity of the parties involved; and (3) the similarity of the issues or claims at stake. *Young*, 2010 WL 11597583, at *2. The cases need not be identical to be duplicative—"[a]ll that need be present is that the two actions involve closely related questions or common subject matter." *Strother*, 2012 WL 4531357, at *2. The proper inquiry is whether the parties and issues substantially overlap. *Young*, 2010 WL 11597583, at *2.

Plaintiff, as the objecting party, has the "burden of proving compelling circumstances to warrant an exception to the first-filed rule." *Manuel*, 430 F.3d at 1135. It is appropriate to depart from the first-filed rule "when there is a showing that the balance of convenience tips in favor of the second forum or that there are special circumstances which justify giving priority to the second action." *Women's choice Pharm., LLC v. Rook Pharm., Inc.*, No. 16-CV-62074, 2016 WL 6600438, at *5 (S.D. Fla. Nov. 8, 2016) (quotation marks omitted).

There is no dispute that the first element of the first-filed rule—chronology of the two actions—is met in this case. The *Frangione* action was filed on May 17, 2021 whereas this case was filed on September 20, 2021. Plaintiff only argues that the second and third elements are not met. In particular, Plaintiff argues that Defendant cannot meet the second requirement because the proposed classes in both cases are materially different. (*See* ECF No. 2–3). Plaintiff claims

that it is not in the best interest of the putative class in this case to be “saddled with litigating alongside *Fragione* counsel” because the *Fragione* proposed class is a nationwide class, while the one here encompasses only the State of Florida. According to Plaintiff, she has reason to believe that the distribution available to the nationwide class will be less than the one available to the Florida class. The first-filed rule, however, does not require that the parties be identical, it merely requires that the parties and issues substantially overlap. *See Young*, 2010 WL 11597583, at *2. Here, the parties are substantially the same. The defendant in this action is the same as the *Frangione* case, and the *Frangione* proposed class is broader and encompasses the proposed class members in this action.

Plaintiff also argues that the issues in both cases are materially different because Plaintiff will be deprived of her right to prosecute Defendant’s alleged violations of 15 U.S.C. § 1692f, since the *Frangione* action does not involve these allegations. However, Plaintiff is not necessarily “deprived” of the opportunity to bring their Section 1692f claims against Defendant, as she so argues. Indeed, it is up to the Middle District to determine whether Plaintiff’s allegations based on Section 1692f should proceed. *Savage v. Seterus, Inc.*, No. 2:19-CV-14256, 2020 WL 230982, at *3 (S.D. Fla. Jan. 15, 2020) (“When the first-filed rule applies, the proper course is to transfer the second-filed case to the first-filed court to determine how the cases should proceed.” (citing *Laskaris v. Fifth Third Bank*, 962 F. Supp. 2d 1297, 1299 (S.D. Fla. 2013))). Both actions involve the issue of whether providing information to a third-party mail provider to prepare and send out debt collection letters violates 16 U.S.C. § 1692c(b) of the Federal Debt Collection Practices Act (“FDCPA”). While the instant action alleges additional violations of other FDCPA provisions, the issues in both cases substantially overlap. As such, the first-filed rule applies to this case.

Finally, Plaintiff argues that there are compelling circumstances that warrant keeping this

case in this District. She argues that the *Frangione* case has been stayed pending a ruling on a motion for rehearing *en banc* before the Eleventh Circuit, whereas this District has refused to stay proceedings predicated on the same case. The Court finds that this does not constitute compelling circumstances. As previously stated, because the first-filed rule applies, it is for the Middle District—not this Court—to determine how this case is to be administered and whether it should also be stayed. *See Savage*, 2020 WL 230982, at *3. That a district judge in this District has denied a stay premised on the same Eleventh Circuit case does not constitute a compelling circumstance. Plaintiff has failed to meet her “burden of proving compelling circumstances to warrant an exception to the first-filed rule.” *See Manuel*, 430 F.3d at 1135. Accordingly, this case shall be transferred to the Middle District of Florida.

For the foregoing reasons, it is

ORDERED AND ADJUDGED that:

1. Defendant’s Motion to Transfer, (ECF No. 7), is **GRANTED**.
 2. This case is **TRANSFERRED** to the United States District Court for the Middle District of Florida.
 3. The Clerk is **DIRECTED** to **CLOSE** this case in the Southern District of Florida.
- DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of October, 2021.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record