JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NATASHA PARACHA, and MORGAN STECKLER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GENERAL MILLS, INC.,

Defendant.

Case No.: CV 18-07659-CJC(JEMx)

ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER CASE TO THE SOUTHERN DISTRICT OF FLORIDA [Dkt. 35]

I. INTRODUCTION

Plaintiffs Natasha Paracha and Morgan Steckler bring this putative class action against Defendant General Mills, Inc. ("General Mills") over the presence of glyphosate, an alleged carcinogen, in four of General Mills' products: Cheerios Toasted Whole Grain Nut Cereal, Nature Valley Granola Protein Oats n' Honey, Nature Valley Crunchy

Granola Bars – Oats n' Honey, and Lucky Charms. (Dkt. 31 [First Amended Complaint, hereinafter "FAC"].) Before the Court is Defendant's motion to transfer the case to the Southern District of Florida under the first-to-file rule and under 28 U.S.C. § 1404(a). (Dkt. 35 [hereinafter "Mot."].) For the following reasons, the motion is **GRANTED**.[1]

II. BACKGROUND

A. The Instant Action

On August 31, 2018, Plaintiff Natasha Paracha[2] filed this case in the Central District of California in her individual capacity and on behalf of a multi-state class comprised of "[a]ll consumers who, within the applicable statute of limitations period until the date notice is disseminated, purchased [Cheerios Toasted Whole Grain Nut Cereal, Nature Valley Granola Protein Oats n' Honey, Nature Valley Crunchy Granola Bars – Oats n' Honey, and Lucky Charms] in California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington." (Dkt. 1; FAC ¶ 23.) As an alternative to her multi-state class, she also seeks to certify a California-only class of consumers who purchased these products.

Plaintiffs' claims arise from representations that General Mills made on its packaging for these products. For instance, every Cheerios box states that the product is "made with 100% whole grain oats," "can help lower cholesterol" and "may reduce the risk of heart disease," is "simply made" and "Gluten Free," contains "NO artificial flavors [or] colors," and the "first ingredient [is] whole grain oats." (*Id.* ¶ 3.) Every box

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for January 14, 2019, at 1:30 p.m. is hereby vacated and off calendar.

[2] Plaintiff Morgan Steckler was later added as a party in the First Amended Complaint. (*See* FAC.)

of Nature Valley Crunchy Granola Bars – Oats n' Honey states the product is "made with 100% NATURAL whole grain OATS" and contains "16g of whole grain." (*Id.*) Plaintiffs allege these representations led reasonable consumers to believe the products would foster their "good health" and not pose a safety risk or potentially harm their health. (*Id.* ¶ 4.)

However, recent testing by the Environmental Working Group, a nonprofit organization dedicated to protect human health and the environment, allegedly revealed that General Mills' products contain glyphosate. (*Id.* ¶ 5.) Glyphosate is a probable carcinogen and one of the most widely used weed killing poisons in the United States. (*Id.* ¶¶ 5, 7.) It is commonly sprayed on crops. (*Id.* ¶ 5.) Plaintiffs allege that General Mills' labeling misled consumers about the presence of glyphosate in its products. (*Id.*)

Plaintiffs assert two claims: (1) unlawful, unfair, and fraudulent business acts or practices in violation of California Business and Professions Code § 17200 and similar consumer fraud statutes on behalf of the multi-state class and California-only class, and (2) violations of California's Consumers Legal Remedies Act on behalf of the California-only class.

B. The *Doss* Case

On August 16, 2018, Mounira Doss filed a class action lawsuit in the Southern District of Florida on behalf of herself and "[a]ll persons who purchased Cheerios or Honey Nut Cheerios in the United States." (Mot. Ex. A [Class Action Complaint in *Mounira Doss v. General Mills, Inc.*, hereinafter "*Doss* Compl."] ¶ 21.) She also seeks to certify a class of all persons who purchased Cheerios or Honey Nut Cheerios in Florida. (*Id.*)

The only products at issue in the *Doss* case are General Mills' Cheerios and Honey Nut Cheerios. Doss alleges that General Mills misled consumers by using labels that touted, among other representations, that Cheerios are "wholesome goodness for toddlers and adults." (*Id.* ¶ 1.) These labels are purportedly misleading because Cheerios and other General Mills products contain glyphosate. (*Id.*) Based on these allegations, Doss asserts causes of action for (1) violations of Florida's Deceptive and Unfair Trade Practices Act, (2) breach of warranty, (3) breach of implied warranty, and (4) unjust enrichment.

III. ANALYSIS

The first-to-file rule "is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district." *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982). The doctrine affords a district court "discretion to transfer, stay, or dismiss the second case in the interest of efficiency and judicial economy." *Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 769 (9th Cir. 1997). The rule is primarily meant to alleviate the burden placed on the federal judiciary by duplicative litigation and to prevent the possibility of conflicting judgments. *Church of Scientology of Cal. v. U.S. Dep't of Army*, 611 F.2d 738, 750 (9th Cir. 1979). Accordingly, the rule should not be disregarded lightly. *Koehler v. Pepperidge Farm, Inc.*, 2013 WL 4806895, at *2 (N.D. Cal. Sept. 9, 2013). Courts analyze three factors in determining whether to apply the first-to-file rule: (1) the chronology of the actions, (2) the similarity of the parties, and (3) the similarity of the issues. *Manier v. L'Oreal USA, Inc.*, 2017 WL 59066, at *2 (C.D. Cal. Jan. 4, 2017). Exceptions to the first-to-file rule are recognized for instances of bad faith, anticipatory suits, and forum shopping. *Id.*

The application of the first factor—the chronology of the actions—is straightforward. "A court need only find that the action in the would-be transferee district court was filed prior to the action in the would-be transferor district court." *Manier*, 2017 WL 59066, at *3. Here, the *Doss* case was filed on August 16, 2018, before Plaintiff Natasha Paracha filed this case on August 31, 2018. This factor favors application of the first-to-file rule.

Second, the Court turns to the similarity of the parties in the two actions. Courts have held that "the first-to-file rule does not require strict identity of the parties, but rather substantial similarity." *Koehler*, 2013 WL 4806895, at *3 (quoting *Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1147 (E.D. Cal. 2010)). For class actions, most courts assess the similarity of the putative classes, not the class representatives. *See Koehler*, 2013 WL 4806895, at *4; *Adoma*, 711 F. Supp. 2d at 1148. Here, General Mills is the sole defendant in both actions. With respect to the putative classes, both cases seek to represent consumers who purchased General Mills' products. Courts have held that proposed classes in class action lawsuits are substantially similar where both classes seek to represent at least some of the same individuals. *Koehler*, 2013 WL 4806895, at *4; *Adoma*, 711 F. Supp. 2d at 1148. The *Doss* plaintiff seeks to represent a nationwide class of consumers that purchased Cheerios and Honey Nut Cheerios. In the instant action, Plaintiffs seek to represent a class of consumers in California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington that purchased Cheerios, Nature Valley granola and granola bars, and Lucky Charms. Since both classes purport to represent individuals who purchased Cheerios, there is substantial overlap. In fact, Plaintiff Natasha Paracha purchased only Cheerios, so her claims would be included as part of the *Doss* class. (FAC ¶ 20.)

Third, the Court looks to whether the issues in the case are "substantially similar." *Adoma*, 711 F. Supp. 2d at 1147. "This factor does not require total uniformity of claims

but rather focuses on the underlying factual allegations." *Zimmer v. Domestic Corp.*, 2018 WL 1135634, at *4 (C.D. Cal. Dec. 22, 2018). In this matter, the core theory for both cases is the same, as the plaintiffs allege that it was deceptive or misleading for General Mills to fail to disclose the presence of glyphosate in Cheerios and other products because glyphosate is harmful. A key issue will be whether it is misleading to label products with health-related attributes if the products contain glyphosate.

The fact that the two cases involve slightly different sets of products does not preclude application of the first-to-file rule. Although the instant action involves two Nature Valley products and Lucky Charms in addition to Cheerios, the primary thrust of both complaints is the presence of glyphosate in General Mills' products. Courts have routinely found cases to be substantially similar even when they include different sets of products, provided the core allegations are the same. *See Schwartz v. Frito-Lay N. Am.*, 2012 WL 8147135, at *1 (N.D. Cal. Sept. 12, 2012) (finding substantial similarity where one case alleged claims related only to bean dip while the other case alleged claims related to bean dip and other Frito Lay products); *Hill v. Robert's Am. Gourmet Food, LLC*, 2013 WL 3476801, at *5 (N.D. Cal. July 10, 2013) (finding substantial similarity where cases involved different but overlapping sets of Pirates Brands snacks); *Pedro v. Millennium Prods., Inc.*, 2016 WL 3029681, at *4 (N.D. Cal. May 27, 2016) (finding substantial similarity where putative class in second-filed action included consumers who purchased a broader array of kombucha products).

Plaintiffs also argue that the cases are not substantially similar because each action raises claims under different state laws. However, both *Doss* and this case assert overlapping claims under Florida's Deceptive and Unfair Trade Practices Act. And while this action raises some unique California state law claims, the factual allegations giving rise to these claims and central theories of liability are identical. *Cf. Calderon v. Cargill, Inc.*, 2013 WL 12205633, at *2 (C.D. Cal. Dec. 10, 2013) (finding additional California-

specific claims in second-filed action and additional Hawaii-specific claims in first-filed action did not defeat substantial similarity). The overlapping claims, products, and class periods mean that a significant portion of discovery in the two actions will be duplicative. Significant judicial resources will be conserved by managing discovery in one court.

Lastly, Plaintiff does not raise any equitable reasons why the first-to-file rule should not apply. When the first-to-file rule applies, the Court may exercise its discretion to "transfer, stay, or dismiss the second case in the interest of efficiency and judicial economy." *Cedars-Sinai*, 125 F.3d at 769. Defendant requests that the Court transfer this case. Transfer is appropriate here because it will minimize the risk of inconsistent judgments that affect the class members who purchased Cheerios. It will also conserve judicial resources and allow discovery to managed by a single court.

IV. CONCLUSION

A first-filed action captioned *Doss v. General Mills*, Case No. 18-cv-61924-RNS, is currently pending in the United States District Court for the Southern District of Florida. The Court finds the first-to-file rule applies because the *Doss* action shares overlapping parties and similar issues to the instant action.[3] Accordingly, Defendant's motion to transfer this case to the Southern District of Florida is **GRANTED**.

DATED: January 7, 2019

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

[3] Since the Court concludes transfer is warranted under the first-to-file rule, it need not reach Defendant's argument that transfer is also justified under 28 U.S.C. § 1404(a). (*See* Mot. at 12–14.)