

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**CIVIL MINUTES**

<b>Date:</b> September 11, 2019	<b>Time:</b> 3 minutes 2:14 p.m. to 2:17 p.m.	<b>Judge:</b> WILLIAM H. ORRICK
<b>Case No.:</b> <a href="#">19-cv-01711-WHO</a>	<b>Case Name:</b> Lockhart v. Beverage Marketing USA, INC.	

**Attorney for Plaintiff:** Kristin G. Simplicio  
**Attorneys for Defendant:** Robert P. Donovan and Derek H. Lim

**Deputy Clerk:** Jean Davis

**Court Reporter:** Marla Knox

**PROCEEDINGS**

The parties appear for argument on defendants’ motion to dismiss or in the alternative transfer this case to the Eastern District of New York, and plaintiff’s motion for appointment of interim counsel under Federal Rule of Civil Procedure 23(g). Having considered the pleadings and arguments of the parties, I GRANT defendants’ motion and TRANSFER this case to the Eastern District of New York. I decline to reach the motion to dismiss or plaintiff’s motion for appointment as interim counsel.

Transfer of this matter is appropriate under both the first-filed rule and under 28 U.S.C. § 1404. Where, as here, the factual bases of the claims are identical, the defendants are identical, and the plaintiff and defense counsel are identical, transfer is appropriate.<sup>1</sup> There are obvious and significant efficiencies to having one judge handle both the 49-state class action and this California-only class action, including the avoidance of duplicative or inconsistent orders on discovery and the merits. While the interests of the three California plaintiffs in this case may be

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<sup>1</sup> The first-to-file rule promotes judicial efficiency by allowing a district court to transfer, stay, or dismiss a case when a complaint involving the same parties and the same issues has already been filed in another district. *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 628 (9th Cir. 1991). The elements of the rule are: (i) chronology of the lawsuits; (ii) similarity of the parties; and (3) similarity of the issues. *Kohn Law Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015). Under § 1404(a), the court has discretion to order transfer “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” District courts have broad discretion when considering such factors as convenience and fairness under Section 1404(a). *Jones v. GNC Franchising*, 211 F.3d 495, 498 (9th Cir. 2000). The district court must consider both private factors concerning the convenience of the parties and witnesses and public factors concerning the interest of justice. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

slightly inconvenienced, the significant efficiencies that adhere to their counsel and the defendants significantly outweigh that slight inconvenience. No one has argued that, other than the three named plaintiffs, there is any connection to California. Neither the evidence in defendants' possession nor the witnesses are in California. Given the lack of connection to California (other than the sale of the product in California), there is little local interest in the controversy. I have no doubt that the court in the Eastern District of New York will be able to apply California law to the claims of the California plaintiffs (if appropriate). The consolidation of these two cases serves the interests of justice.

IT IS SO ORDERED.