JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 20-00936-JGB-(SPx)**	Date	September 18, 2020
Title	***Richard Mapstead, et al. v. Lorex Corporation***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Defendant's Motion to Transfer Venue (Dkt. No. 21); (2) DENYING Defendant's Motion to Dismiss as MOOT (Dkt. No. 20); and (3) VACATING the September 21, 2020 Hearing (IN CHAMBERS)**

Before the Court are a Motion to Transfer Venue and a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) filed by Defendant Lorex Corporation. ("Motion to Transfer" Dkt. No. 21; "Motion to Dismiss," Dkt. No. 20.) The Court determines these matters are appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering all papers filed in support of and in opposition to the motions, the Court GRANTS Defendant's Motion to Transfer and DENIES the Motion to Dismiss as MOOT. The September 21, 2020 hearing is VACATED.

I. BACKGROUND

On April 30, 2020, Plaintiffs Richard Mapstead, Sevim Badak, Robert McGinn, David Chromy, and Ronald Pottinger, on behalf of themselves and others similarly situated, filed a complaint against Defendant. ("Complaint," Dkt. No. 1.) Plaintiffs amended their Complaint as of right, filing a First Amended Complaint on June 30, 2020. ("FAC," Dkt. No. 13.) The FAC alleges seven causes of action: (1) breach of implied warranty; (2) breach of the California Song-Beverly Act – implied warranty of merchantability; (3) violation of the Consumer Legal Remedies Act ("CLRA"); (4) violation of the California Unfair Competition Law ("UCL"); (5) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"); (6)

violation of the Arizona Consumer Fraud Act ("A.R.S."); and (7) violation of the Kentucky Consumer Fraud Act. (See FAC.)

On July 30, 2020, Defendant filed the Motions. Plaintiffs filed their Oppositions on August 24, 2020. ("MTD Opposition," Dkt. No. 27; "MTT Opposition," Dkt. No. 28.) Defendant replied on September 7, 2020. ("MTD Reply," Dkt. No. 29; "MTT Reply," Dkt. No. 30.)

II. FACTUAL ALLEGATONS

Plaintiffs allege the following facts. Lorex, a video surveillance company, manufactures and distributes security and monitoring systems and cameras. (FAC ¶ 1.) Lorex represents that its security systems can be accessed and monitored remotely with smart devices through downloadable applications. (Id. ¶¶ 6-7; 48-49.) Specifically, Lorex represented to consumers that "security … [is] a state of mind" and "[s]taying connected to the things you care about, regardless of your location, is a fundamental factor when it comes to that state of mind." (Id. ¶¶ 47-48.) Lorex advertised that its security camera systems "feature remote access via the Internet[.]" (Id. ¶ 8.) It further affirmed consumers that its "professional grade systems include remote viewing capabilities, perfect for staying connected and viewing multiple sites, from a single app." (Id. ¶ 49.)

Plaintiffs purchased Lorex security cameras after viewing Lorex's representation that they would be able to remotely access the video feed of the security cameras through their phones. (Id. ¶¶ 4; 60-63; 85-88; 98-100; 119-21; 137-39.) Relying on this representation, prior to August 2019, Plaintiffs used their phones to remotely access their security systems when they were away from home. (Id. ¶¶ 64; 88; 100; 139.)

In July 2019, Lorex notified its consumers that it would roll out an update to all Lorex systems, which would require "some customers to transition to a new Lorex App." (Id. ¶ 9.) It anticipated the possibility of "a few unexpected interruptions to customer devices." (Id.) On August 15, 2019, Lorex stopped supporting the apps that had until then provided remote access to consumers' security systems, and stopped supporting the firmware that supported these systems. (Id. ¶ 12.) On or around August 2019, Plaintiffs were no longer able to connect to their security cameras' video feed remotely. (Id. ¶¶ 10; 65-67; 89-90; 102-04; 140.)

Lorex also discontinued support for certain models of its security cameras. (Id. ¶ 14.) The discontinued cameras no longer worked with the new app or updated firmware, and consumers were forced to replace those cameras. (Id. ¶ 15.)

After Lorex's firmware update and replacement of mobile apps, Lorex acknowledged that some Flir model cameras would no longer be supported and that consumers may be eligible for a free replacement camera or a store discount of $120. (Id. ¶ 53.) The replacement cameras were not adequate replacements for the cameras originally purchased, and the store discount does not cover the cost to replace the cameras the consumers originally purchased. (Id. ¶¶ 54-

55.) Consumers have also reported that the new Lorex app is inferior to the app consumers were offered when they made their original purchases. (Id. ¶¶ 56-58.)

After being unable to access their security feeds remotely, Plaintiffs contacted Lorex's technical support by phone and e-mail several times, but they were still unable to restore remote access to their security systems. (Id. ¶¶ 69-80; 91-97; 105-15; 142-52.) While some Plaintiffs received replacement equipment, they were still unable to remotely access their security feed from their phone, and the quality of the video feed worsened. (Id. ¶¶ 83; 118.)

There are multiple consumer complaints online about Lorex's security cameras and defective software updates, as well as Lorex's failure to respond to consumers seeking help to regain access, or to remedy or respond to consumer complaints. (Id. ¶¶ 50-52.)

III. LEGAL STANDARD

Under the comity doctrine, a district court may decline jurisdiction over a matter if a complaint has already been filed in another district. Church of Scientology of Cal. v. United States Dep't of Army, 611 F.2d 738, 749 (9th Cir. 1979) overruled on other grounds by Animal Legal Def. Fund v. United States Food & Drug Admin., 2016 WL 4578362 (9th Cir. Sept. 2, 2016). The doctrine is designed "to avoid placing an unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting judgments." Id. at 750. The Ninth Circuit has further emphasized that "[t]he first-to-file rule was developed to 'serve[ ] the purpose of promoting efficiency well and should not be disregarded lightly.'" Alltrade, Inc. v. Uniweld Prod., Inc., 946 F.2d 622, 625 (9th Cir. 1991) (quoting Church of Scientology, 611 F.2d at 750). However, the first-to-file rule "is not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound judicial administration." Pacesetter Sys., Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th Cir. 1982). "The most basic aspect of the first-to-file rule is that it is discretionary." Alltrade, Inc., 946 F.2d at 628.

When two actions involving similar parties and issues are commenced in separate forums, a court should typically give preference to the first-filed plaintiff's choice of forum under the first-to-file rule. Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc., 179 F.R.D. 264, 269 (C.D. Cal. 1998). In determining whether to apply the first-to-file rule, courts consider three threshold factors: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues. Alltrade, Inc., 946 F.2d at 625–26. Courts have further clarified the second requirement does not mandate the two actions be identical but is satisfied if they are "substantially similar." See, e.g., Inherent.com v. Martindale-Hubbell, 420 F. Supp. 2d 1093, 1097 (N.D. Cal. 2006). However, a party to the later-filed action may request that the court disregard the first-to-file rule pursuant to several equitable exceptions: (1) bad faith; (2) anticipatory suits; (3) forum shopping; and (4) a balance of convenience weighing in favor of the later filed suit. Guthy-Renker, 179 F.R.D. at 269; see also Alltrade, Inc., 946 F.3d at 628.

IV. DISCUSSION

A. Motion to Transfer

Defendant argues that the Court should transfer this action because it substantially overlaps with an earlier-filed action in the Northern District of California, Soo, et al. v. Lorex Corporation, et al., No. 3:20-cv-01437-JSC (N.D. Cal.) ("Soo"). (See MTT.) The Court agrees. After considering (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues, Alltrade, Inc. v. Uniweld Prod., Inc., 946 F.2d 622, 625-26 (9th Cir. 1991), the Court finds that these factors favor transfer.

1. Chronology of the actions

First, Plaintiffs commenced this action on April 30, 2020. (See Complaint.) The Soo action was filed two months earlier, on February 26, 2020.

2. Similarity of parties

Second, the parties here are substantially similar. Plaintiffs argue that "[t]he first-to-file rule applies when the issues and parties in two lawsuits are identical. . . ." (Opp'n at 4.) That is not the standard. For the first-to-file rule to apply, "the parties need only be 'substantially similar,' not identical." Novotny v. Panasonic Consumer Elecs. Co., 2010 WL 11596113, at *2 (C.D. Cal. Oct. 1, 2010).

The only defendant in this action, Lorex Corporation, is also a defendant in the Soo action. (MTT at 4.) Although the Soo action includes a second defendant, all the parties need not perfectly match. See Pac. Coast Breaker, Inc. v. Conn. Elec., Inc., 2011 WL 2073796, at *3 (E.D. Cal. May 24, 2011) ("The rule is satisfied if some [of] the parties in one matter are also in the other matter, regardless of whether there are additional, unmatched parties in one or both matters.") (citation omitted). Moreover, the Ninth Circuit has held that a party may not avoid the first-to-file rule by omitting one party from the second-filed lawsuit. Kohn Law Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc., 787 F.3d 1237, 1240 (9th Cir. 2015).

Defendant argues that some Plaintiffs are members in the putative class in the Soo action. (MTT at 4.) Here, Plaintiffs propose five state sub-classes consisting of "All residents of the State of California[, the State of Illinois, the State of Arizona, and the State of Kentucky] who purchased a Lorex security camera system and/or security camera and/or recorder, for personal or commercial use (not for resale) and who lost access to their video feed and Lorex's firmware and mobile App upgrade on or about July or August 2019." (FAC ¶ 153.) In Soo, the proposed class definition is "all persons in the United States who purchased Flir FX indoor Series, Flir FX Outdoor Series, Flir FXC Indoor Series, and Flir FXC Outdoor series security cameras." First Am. Compl. ¶ 26, Soo, ECF No. 21. In its decision granting in part and denying in part defendants' motion to dismiss, the Soo court dismissed the nationwide class's common law claims brought under the laws of states other than California and New York for lack of standing. Sept. 9, 2020 Order, Soo, ECF No. 51. Even without the nationwide allegations,

however, Soo "will still involve a class of all California camera purchasers, just as this case does." (MTT at 5.)

Plaintiffs object that "Plaintiffs in this action represent a broader set of purchasers in a narrower state sub-class." (MTT Opp'n at 9.) But the "proposed classes in class action lawsuits are substantially similar where both classes seek to represent at least some of the same individuals." Retina Assocs. Med. Grp., Inc. v. Olson Research Grp., Inc., 2019 WL 3240110, at *3 (C.D. Cal. Mar. 20, 2019) (citing Wallerstein v. Dole Fresh Vegetables, Inc., 967 F. Supp. 2d 1289, 1296 (N.D. Cal. 2013)). And, as Defendant points out, that includes instances where putative classes concern different geographic scopes, time periods, or products. (MTT Reply at 4.) See, e.g., Red v. Unilever United States, Inc., 2010 WL 11515197, at *5 (C.D. Cal. Jan. 25, 2010). "So long as [one plaintiff] is represented in both actions, the risk of inconsistent judgments remains." Tompkins v. Basic Research LL, 2008 WL 1808316, at *6 (E.D. Cal. Apr. 22, 2008). Thus, applying the correct standard, the Court finds that the parties are substantially similar.

3. Similarity of issues

Third, both matters concern substantially similar issues. Courts employ a "substantial similarity" test in considering how the issues compare. Novotny, 2010 WL 11596113, at *3. "[E]xact parallelism . . . is not required." Nakash v. Marciano, 882 F.2d 1411, 1416 (9th Cir. 1989); see also Kohn Law Grp., Inc., 787 F.3d at 1240 ("The issues in both cases also need not be identical, only substantially similar.").

Plaintiffs argue that the issues are not similar because "except for one cause of action, Soo raises an entirely different set of claims, a different set of operative facts, a different set of rights and remedies, and different state laws." (MTT Opp'n at 7.) The Soo plaintiffs brought trespass to chattels, unjust enrichment, UCL, and New York consumer protection claims. First Am. Compl. ¶¶ 349-50, Soo, ECF No. 21. Plaintiffs here brought breach of warranty, CLRA, and UCL claims (as well as claims under Kentucky's, Arizona's, and Illinois' consumer protection statutes). (See FAC.)

However, similarity of the issues "does not require total uniformity of claims but rather focuses on the underlying factual allegations." Zimmer v. Dometic Corp., 2018 WL 1135634, at *4 (C.D. Cal. Feb. 22, 2018) (emphasis added). (MTT Reply at 5.) Plaintiffs counter, without support, that "the different claims in both cases are based on a distinct set of operative facts." (MTT Opp'n at 9.) But a review of the operative complaint in Soo makes clear that, on the contrary, the underlying facts substantially overlap. Like Plaintiffs, the Soo plaintiffs allege that (1) they purchased home security cameras by Lorex; (2) that they lost the ability to view their cameras' video feeds remotely starting in August 2019, when Lorex ceased mobile app support for certain Lorex products; (3) and that Lorex's replacement program was inadequate. First Am. Compl. ¶¶ 10-14, 16-25, 32-39, Soo, ECF No. 21. Because the factual basis of the actions is substantially the same, even where the instant action and Soo are based on different statutes, the issues are substantially similar. Sporn v. TransUnion Interactive, Inc., 2019 WL 151575, at

*6 (N.D. Cal. Jan. 10, 2019); see also Granillo v. FCA U.S. LLC, 2016 WL 8814351, at *4 (C.D. Cal. Jan. 11, 2016) ("[W]hile the legal claims asserted by the parties in this action and the [first-filed] action do differ in some respects, this does not by itself require that the action not be transferred given the broader similarities in the alleged misconduct challenged by both actions."). This third factor therefore favors transfer.

After considering all three factors, "to avoid placing an unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting judgments[,]" the Court finds this case should be transferred to the Northern District of California. Church of Scientology of Cal. v. United States Dep't of Army, 611 F.2d 738, 750 (9th Cir. 1979).

4. Equitable Exceptions

Courts recognize equitable exceptions to the first-to-file rule, including (1) bad faith; (2) anticipatory suits; (3) forum shopping; and (4) a balance of convenience weighing in favor of the later filed suit. Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc., 179 F.R.D. 264, 269 (C.D. Cal. 1998). Plaintiffs argue that Defendant's bad faith and the prejudice to Plaintiffs warrant disregarding the first-to-file rule. (MTT Opp'n at 10.)

To support their claims of bad faith, Plaintiffs argue that Lorex has indicated that it reserves the right to refile a motion to compel arbitration in this action, even if it is unsuccessful in Soo, which Plaintiffs claim demonstrates Lorex's intent to delay the proceedings and impede the progress of Plaintiffs' rights to relief. (MTD Opp'n at 10-11.) Courts have recognized bad faith where, for instance, "the parties have discussed or begun preparing for litigation and one party has made an affirmative representation inducing the other party to delay filing suit." Altair Instruments, Inc. v. Telebrands Corp., 2019 WL 2022224, at *2 (C.D. Cal. Feb. 27, 2019). That is not the case here. Nor do Plaintiffs identify any authorities supporting its claims that any efforts to compel arbitration here would amount to bad faith.

Plaintiffs' prejudice argument does not fare any better. Plaintiffs argue that transferring the case would prejudice Plaintiffs because Soo alleges a substantially different set of claims and issues, and combining the cases would therefore deprive Plaintiffs of the opportunity to litigate their claims, and potentially affect their class certification success. (MTT Opp'n at 10.) But the Court has already found that the issues here are substantially similar, and to the extent that the overlap between the cases may be unclear, the Soo court "already has a deep familiarity with the facts … [and] is in a better position to determine whether the two cases should proceed separately." Persepolis Enter. v. United Parcel Serv., Inc., 2007 WL 2669901, at *2 (N.D. Cal. Sept. 7, 2007).

5. Proceeding before Magistrate Judge

Finally, Plaintiffs argue that, unlike the parties in Soo, they do not consent to Magistrate Judge Scott Corley's jurisdiction, and would therefore be prejudiced by the Court's transfer of this action by being "forced to proceed before Magistrate Judge Corley." (MTT Opp'n at 6.)

The Court is puzzled by this argument. Upon transfer of this action, there is no reason to believe that Plaintiffs would be deprived of an opportunity to consent or decline to Judge Corley's jurisdiction, as the parties did in Soo. See Clerk's Notice Re: Consent or Declination, Soo, ECF No. 9; Civil Standing Order for Magistrate Judge Jacqueline Scott Corley (Rev. Aug. 12, 2020.). Plaintiffs add that because they do not consent to the Magistrate Judge's authority, "the District Judge will need to step in to administer this case," eliminating any efficiencies of transfer. (MTT Opp'n at 6.) But, as Defendant points out, there would still be significant efficiencies in Magistrate Judge Corley's handling of discovery and non-dispositive issues. (MTT Reply at 8.) Moreover, Plaintiffs fail to provide any authorities that would support disregarding the first-to-file rule simply because a magistrate judge is administering the first-filed action. (Id.) The Court squarely rejects this argument, and finds that transfer to the Northern District of California is appropriate.

B. Motion to Dismiss

Because the Court holds that a transfer of venue is appropriate, it DENIES Defendant's Motion to Dismiss as MOOT.

V. CONCLUSION

For the reasons above, the Court GRANTS the Motion to Transfer and this matter is hereby TRANSFERRED to the Northern District of California. The Motion to Dismiss is DENIED as MOOT. The September 21, 2020 hearing is VACATED.

IT IS SO ORDERED.