

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

AMANDA JONES,
Plaintiff,

v.

DAN KLEINMAN,
Defendant.

Civil Action No. 3:24-CV-00972-BAJ-SDJ

**DEFENDANT’S REPLY MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS OR TO
TRANSFER VENUE**

Defendant Dan Kleinman replies in support of his Motion to Dismiss or Transfer Venue.¹

1.0 INTRODUCTION

Plaintiff alleges that she is an elementary school librarian and presents herself to the public as a nationally renowned anti-censorship advocate. ECF No. 1 at ¶ 2. However, despite voluntarily entering the arena of nationwide debate, she seems to chafe at being criticized and sues those who express unflattering opinions of her. Defendant Dan Kleinman is the current target of her SLAPP suit campaign.

Ms. Jones is so angry at Mr. Kleinman for his opinions that she sued him twice. On November 26, 2024, Plaintiff Amanda Jones sued Defendant Dan Kleinman in the U.S. District Court for the District of New Jersey for defamation and false light. *See* ECF No. 6-2. Approximately seven hours later, she filed the exact same Complaint in this Court. *See* ECF No. 6-4 at ¶¶ 5-6. The later-filed Complaint in Louisiana is not just similar to the New Jersey Complaint. It is word-for-word identical. *See* ECF Nos. 1 and 6-2.

Ms. Jones claims she filed the New Jersey Complaint “out of an abundance of caution only, to preserve all rights.” Opposition at 1. This is confusing. The “cautious” thing to do would be the

¹ Filed pursuant to LR 7(f)

substantively correct thing – to file no lawsuit at all. However, failing that, the cautious thing to do would be the procedurally correct thing and file one lawsuit.

She also claims that the first-to-file “does not apply” to this matter. *Id.* at 2. However, she makes no effort to justify her decision to file the same suit in two different courts. Nor does she explain why the first-to-file rule should not apply to her. While she claims that she was afraid that Defendant Kleinman might file a jurisdictional motion to dismiss in this Court, that does not provide a reasonable basis for her to file the same Complaint in two different courts. *See id.* at ¶ 3. There is no allowance for “protective” duplicative lawsuits designed to prevent forum shopping. If this Court permits her conduct, then *every* litigant in a diversity case should simultaneously file in their home court and in the defendant’s home court. In the case of corporations, perhaps even three cases –where the plaintiff is, the principal place of business of the defendant, and the state of incorporation of the defendant. In multiple-party cases, this could increase exponentially, as multiple corporations could sue multiple corporations, in a shotgun approach, waiting to see which jurisdiction makes the more favorable ruling. As a protective measure (protective with respect to order, civil procedure, and the rule of law), this Court should not stamp its imprimatur upon this exotic new method of filing “just in case we lose in the other court” complaints. One case in one court at a time per case is how it has been and how it should be.

The case law in Louisiana and New Jersey is clear that, since the New Jersey Complaint was filed first, that case should proceed while this case should not. This may not be what Ms. Jones wants, but if she was truly being “cautious,” she would have only filed in the court where she wanted to litigate. Defendant’s Motion should be granted, and this case should either be dismissed or transferred to the U.S. District Court for the District of New Jersey.

2.0 ARGUMENT

2.1 This case should be dismissed or transferred for improper venue

Res judicata principles prohibit plaintiffs from “simultaneously prosecuting multiple suits involving the same subject matter against the same defendants.” *Armadillo Hotel Grp. v. Harris*, 84 F.4th 623, 628 (5th Cir. 2023). Courts protect defendants from “being harassed by repetitive actions based on the same claim.” *Id.* When an earlier suit involving the same facts and same claims is still pending when the plaintiff files a repetitive suit in another court, the relevant factors the court examines when determining whether to apply *res judicata* are “whether the parties are the same or in privity” and “whether the same claim or cause of action is involved in both suits.” *Id.* Here, both factors are present, and this case should be dismissed or transferred to New Jersey.

The parties and the causes of action in the Complaints that Ms. Jones filed in New Jersey and this Court are exactly the same. In fact, the Complaints themselves are word-for-word identical. Plaintiff does not dispute that she intentionally filed identical lawsuits in two Courts or that she filed the Complaint in New Jersey first.

Jones’ stated rationale for filing the exact same lawsuit in two different courts is that she thought Defendant Kleinman might move to dismiss in this Court. *See* Opposition at 4-5. However, she cites no authority supporting her decision to file the same case twice. None exists. If she thought that Mr. Kleinman might move to dismiss in this Court and she preferred to litigate here, she should have prepared to oppose and defend against a motion to dismiss. Ms. Jones claims that she filed a Complaint in this Court “as a protective measure only” because Mr. Kleinman “successfully challenged at least one federal court’s personal jurisdiction over him” in a 10-year old, unrelated case in the Northern District of Illinois based upon completely different facts. ECF No. 11-1 at 1. In other words, because Ms. Jones surmised that she might need to defend against a

jurisdictional motion to dismiss from Mr. Kleinman in Louisiana, she opted to intentionally file the exact same case in two different courts. What is the value of such a maneuver? It is odd. If she had filed here only, and Mr. Kleinman prevailed on a motion to dismiss on jurisdictional grounds, then she could simply re-file in a better jurisdiction. If she wanted to avoid motion practice like that, then she could have done what litigants do every day, and simply file against the defendant in a jurisdiction where she would not draw such a motion. There is no allowance for “protective” duplicative lawsuits designed to permit forum shopping. If this court approves of such conduct, then *every* litigant in a diversity case should simultaneously file in their home court and in the defendant’s home court. In the case of corporations, perhaps even *three* cases – one where the plaintiff is, the principal place of business of the defendant, and the state of incorporation of the defendant. In multiple-party cases, this could increase exponentially, as multiple corporations could sue multiple corporations, in a shotgun approach, waiting to see which jurisdiction makes the more favorable ruling. This court should not stamp its imprimatur upon this exotic new method of filing a “just in case we lose in the other court” complaints. One complaint at a time per case is how it has been and how it should be.

Res judicata principles and the first-to-file rule dictate that the earlier suit is the one that should survive. As noted in Defendant’s Motion, the “dates to compare for chronology purposes of the first-to-file rule are when the relevant *complaints* are filed.” *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 790 (6th Cir. 2016) (emphasis added); *see also Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 633 (9th Cir. 1991) (holding that the first-to-file rule “allows a district court to transfer, stay, or dismiss an action when a similar *complaint* has already been filed in another court”) (emphasis added). Jones acknowledges that the New Jersey Complaint was “technically filed ... first.” Opposition at 2. While she claims it was due to technical issues in this

Court, she still made the decision to file two identical Complaints and to file first in New Jersey. She could have waited until her technical issues were resolved but did not. She could have waited a day to file, there was no rush. Better still, she could have only filed one case but, again, did not. Having made the decision to file two identical lawsuits, she must accept the consequences of that decision and abide the first filed rule.

In her Opposition, Jones argues that the first-to-file rule does not apply in this case but never explains why. *See* ECF No. 9 at 2-5. She acknowledges that courts only decline to apply the first-to-file rule when there are “compelling circumstances” to ignore it. *Id.* at 3. However, the only “compelling circumstance” that she identifies is that she believed Mr. Kleinman might challenge this Court’s personal jurisdiction. *See id.* This is not a “compelling circumstance” at all, and it certainly does not warrant disregarding the first-to-file rule.

The most common “compelling circumstance” causing courts to disregard the first-to-file rule is when one party fears that he is about to be sued and rushes to his jurisdiction of choice to file a declaratory judgment action before his opponent files suit in her preferred jurisdiction. *See, e.g., Pontchartrain Partners, LLC v. Tierra De Los Lagos, LLC*, 48 F.4th 603, 606 (5th Cir. 2022), citing *Missions Ins. Co. v. Puritan Fashions Corp.*, 706 F.2d 599, 602 n.3 (5th Cir. 1983). That is not what happened here. Amanda Jones is Plaintiff in both cases. Dan Kleinman is Defendant in both. Ms. Jones’ only reason for arguing the first-to-file rule should not apply is that she would rather be in Louisiana. However, this is a problem of her own making. She chose to sue Mr. Kleinman twice and to file in New Jersey first. Moreover, by filing in New Jersey, she unquestionably consented to the New Jersey court exercising jurisdiction over her. *See Maiz v. Virani*, 311 F.3d 334, 340 (5th Cir. 2002).

If anything, “compelling circumstances” dictate that this case should be dismissed or transferred to New Jersey. Mr. Kleinman relied upon the first-to-file rule when preparing to defend himself in New Jersey and Louisiana. Because of the rule, he only moved to dismiss or transfer this case. In New Jersey, he answered her Complaint, filed a Motion for First-Filed Injunction, and prepared a motion to dismiss pursuant to New Jersey’s anti-SLAPP law. In other words, Mr. Kleinman already relied upon that rule. Ms. Jones is seeking to use that reliance to his detriment. She should not be permitted to do so.

2.2 Section 1404 supports transfer of this case to New Jersey

In her Opposition, Ms. Jones acknowledges “that this action ‘might have been brought’ in New Jersey.” Opposition at 6. In fact, it *was* brought in New Jersey. By her. As noted in Plaintiff’s Motion, “[w]hether the suit ‘might have been brought’ in the proposed transferee district is the first question.” Motion at 3, citing *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). Given that Ms. Jones not only filed her case in New Jersey but filed it there *before* she filed this case, that should be the end of the Court’s analysis. The factors that Ms. Jones chides Defendant Kleinman for not analyzing only make sense to apply when the defendant is attempting to transfer the case outside of a forum that the plaintiff chose. But here, Plaintiff *chose* to litigate in New Jersey and cannot complain about being “forced” to litigate there.

This Court should not entertain Jones’ attempt to distance herself from her decision to file in New Jersey. By doing so, she waived any 1404 arguments. *See Olberding v. Illinois C.R. Co.*, 340 U.S. 338, 340 (1953); *see also Duke v. Flying J, Inc.* 178 F. Supp. 3d 918, 921 (N.D. Cal. 2016) (By “choosing a particular forum to commence the action, a plaintiff is generally considered to have waived objections to proceeding in that forum.”) Jones chose to file her Complaint with the District of New Jersey. As such, she has waived any objection to proceeding there.

Defendant will briefly discuss the private and public interest factors courts typically consider in motions brought under section 1404 in case this Court decides to consider them. The private interest factors are: (1) ease of access to sources of proof; (2) availability of process to secure the attendance of witnesses; (3) cost of attendance for willing witnesses; and (4) any other practical issues. *See In re Volkswagen of Am., Inc.*, 545 F.3d at 315. The public interest factors are: (1) administrative difficulties flowing from court congestion; (2) local interest in deciding cases at home; (3) familiarity of the forum with the law that will govern; and (4) avoidance of unnecessary problems of conflicts of law or application of foreign law. *See id.*

With regard to the private interest factors, Jones argues that all sources of proof are in Louisiana because she is simply “an elementary school librarian in Louisiana.” Opposition at 6. She is much more than that. Jones is a national figure. She has written a book that Amazon describes as a “NATIONAL BESTSELLER.” (*See* Amazon listing for “That Librarian” by Amanda Jones, attached to the Declaration of Ronald Green (“Green Decl.”) as **Exhibit 1**) She is the subject of a documentary produced by famous actress Sarah Jessica Parker. (*See* Martin, Dale, “Sarah Jessica Parker on Producing Sundance Doc about Librarians Fighting Book Bans,” *Variety* (Dec. 12, 2024), attached to the Green Decl. as **Exhibit 2**) She is a public figure who has inserted herself into the national conversation and can hardly be described as a simple elementary school librarian in Louisiana.

Jones’ national prominence suggests that her witnesses and sources of proof are not all located in Louisiana, as she would lead the Court to believe. In the Opposition, she makes no effort to identify any character witnesses or other persons who will not be available if the case is heard in New Jersey. *See* Opposition at 6. Moreover, Kleinman did not “specifically direct his statements to a Louisiana audience.” *Id.* Jones is a national figure with a national (likely international)

audience. In any case, even if this case were only about Louisiana, and it is not, these are issues Jones should have considered *before* she elected to file suit in New Jersey.

Regarding the public interest factors, Jones again attempts to portray herself as a “public-school educator” in Louisiana as the primary reason that this case can only proceed in Louisiana. *See* Opposition at 8-9. Again, she has turned herself into a national figure and sought national and international publicity for her self-described anti-censorship advocacy. This is not solely a case about local, Louisiana interests, as Jones tacitly acknowledged when she filed it in New Jersey, which is where it should proceed.

3.0 CONCLUSION

Based upon the arguments contained in his Motion to Dismiss or to Transfer and this Reply in support of the Motion, Defendant Dan Kleinman respectfully requests that the Court grant his Motion and either transfer this case to New Jersey or dismiss it.

Dated: February 6, 2025 .

Respectfully Submitted,

/s/ Heather Cross
Heather Cross
The Cross Law Firm
6663 Jefferson Hwy
Baton Rouge, LA 70806
Tel: (225) 256-0366
Email: hcross@lawacrossla.com

Attorneys for Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2025, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Heather Cross
Heather Cross