

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AMANDA JONES,
Plaintiff,
v.
DAN KLEINMAN.
Defendant.

Civil Action No. 2:24-CV-10750-BRM-JSA

MOTION DATE: FEBRUARY 18, 2025

ORAL ARGUMENT REQUESTED

BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO STAY PROCEEDINGS

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Defendant Dan Kleinman opposes the Motion to Stay.

1.0 INTRODUCTION AND BACKGROUND

Plaintiff alleges that she is an elementary school librarian and presents herself to the public as a nationally-renowned anti-censorship advocate. *See* 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. She says that she did this out of an “abundance of caution.” This is confusing. The “cautious” thing to do would be the 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.

On November 26, 2024, Plaintiff Jones sued Defendant Kleinman in this Court for defamation and false light. *See* ECF No. 1. She subsequently filed the exact same case against Mr. Kleinman in the U.S. District Court for the Middle District of Louisiana. *See* Complaint, U.S. District Court for the Middle District of Louisiana, a true and correct copy of which is attached as **Exhibit 1**. The later-filed Louisiana Complaint is not just similar to the one filed in this Court. It is word-for-word identical. *See id.*

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 “protective” value of such a maneuver? It is odd. If Mr. Kleinman prevailed in a 12(b)(2) motion in Louisiana, then she could simply re-file in a better jurisdiction. If she wanted to avoid motion practice like that, then she could have done the “cautious” thing and simply file against the defendant in a jurisdiction where she would not draw such a motion. Litigants make these decisions all across the country, every day. 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. 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 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.

The caselaw in New Jersey and Louisiana is clear that, as the earlier filed of the two cases, this case should proceed while the Louisiana case should not. Clearly this is not what Ms. Jones wants, but while she was being cautious, she should have been cautious to only file where she wanted to litigate. After Ms. Jones sued him on the exact same facts and claims in two different courts, Mr. Kleinman moved this Court for a first-filed injunction (ECF No. 10) and filed a motion to dismiss or stay in the Middle District of Louisiana. *See* Motion to Dismiss or Transfer, U.S. District Court for the Middle District of Louisiana, attached hereto as **Exhibit 2**. Because the case

should proceed in this Court, he also laid the groundwork for special motion to dismiss in this Court based upon New Jersey’s anti-SLAPP law. ECF No. 13.

However, despite filing in this Court first, Ms. Jones has decided that she would rather proceed in Louisiana and has asked that this case be stayed. The Court should deny her Motion.

2.0 ARGUMENT

2.1 This case should not be stayed

In her filings in both New Jersey and Louisiana, Amanda Jones seems to wish to gaslight everyone that it is standard procedure for a plaintiff to file competing suits in two different courts if the plaintiff anticipates a jurisdictional challenge from the defendant in one. It is not, and Plaintiff has not cited a single case supporting her decision to do so.

In seeking to stay this case and proceed in Louisiana, Plaintiff neglects to examine or argue the most salient issue in determining which of the two cases that she filed should proceed and which should not – which one was filed first. “[T]he first-filed rule counsels deference to the earlier-filed suit.” *Senju Pharm. Co. v. Metrics, Inc.*, 96 F. Supp. 3d 428, 446 (D. N.J. 2015), citing *E.E.O.C. v. Univ. of Penn.*, 850 F.2d 969, 971 (3d Cir. 1988); *Crosley Corp. v. Hazeltine Corp.*, 122 F.2d 925, 929 (3d Cir. 1941).

When determining which case was filed first, 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-filed 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). In this case, Plaintiff Jones filed this Complaint at

3:02 a.m. EST on November 26, 2024. *See* ECF No. 10-02 at ¶ 5. She filed the Louisiana Complaint at 9:58 a.m. EST on the same day - about seven hours later. *See id.* at ¶ 6.

While Ms. Jones argues that she filed this Complaint “out of an abundance of caution only,” she nevertheless filed this case *first*. ECF No. 11-01 at 1. This case should proceed, and the Louisiana case should be stayed or dismissed as argued in Defendant’s Motion for First-Filed Injunction in this Court and his Motion to Dismiss or Transfer filed in the Middle District of Louisiana. ECF No.10-01 at 4.

2.2 The stay factors weigh in favor of staying or dismissing the Louisiana case

The factors this Court examines when deciding whether to stay a case also weigh in favor of allowing this case to proceed and staying or dismissing the Louisiana case Ms. Jones subsequently. Those factors are: (1) whether a stay would unduly prejudice or tactically disadvantage the non-moving party; (2) whether the denial of the stay would cause hardship or inequity for the moving party; (3) whether a stay would simplify the issues and the trial; and (4) whether discovery is complete or there is a trial date. *See Akishev v. Kapustin*, 23 F. Supp. 3d 440, 446 (D. N.J. 2014). The movant must “make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay ... will work to damage [someone] else.” *Id.*, quoting *Actelion Pharm. Ltd. v. Apotex, Inc.*, 2013 U.S. Dist. LEXIS 135524, at *3 (D. N.J. Sept. 6, 2013). Defendant will be harmed if this case is stayed rather than the Louisiana case.

Whether a stay would unduly prejudice or disadvantage Defendant: After Plaintiff improperly filed two identical cases in this Court and the Middle District of Louisiana, Defendant Kleinman relied upon clear caselaw when determining that the first-filed rule mandated that this case should be the one to go forward. He expended significant resources in filing an Answer and

a Motion for First-Filed Injunction in this Court. He prepared and submitted a pre-motion conference letter regarding the anti-SLAPP motion he intends to file in this Court, which has already been prepared and relies upon New Jersey's anti-SLAPP statute. In Louisiana, he has only submitted a Motion to Dismiss or Transfer Venue. That Motion is also predicated upon the first-filed rule.

If the Court disregards the caselaw and allows Ms. Jones to stay her first-filed action in New Jersey, it will moot the work Mr. Kleinman's counsel has done preparing to litigate in this Court, which he did relying on the crystal clear case law. Plaintiff Jones has already forced Mr. Kleinman to spend significant resources to battle her spurious claims in two different courts. It should not allow her to disadvantage him once again by letting her ignore the rules and stay the case that should proceed pursuant to decades of established caselaw.

Whether denial of a stay will cause hardship to Ms. Jones: Plaintiff Jones cannot reasonably argue that she will be disadvantaged by the denial of her Motion to Stay. She chose to initiate this dispute in the District of New Jersey, so she was obviously willing and able to litigate here, and voluntarily subjected herself to jurisdiction here.

Moreover, she has not even attempted to justify why she believed it was appropriate to file in two separate courts in the first place. The case she cited from the Northern District of Illinois where Mr. Kleinman successfully challenged jurisdiction over a decade ago provides no support for her filing of two identical complaints. She cannot be disadvantaged by the appropriate resolution of an issue that she unnecessarily created. She should be required to proceed in New Jersey, as clear caselaw dictates.

Whether a stay would simplify the issues and the trial: Regarding this factor, Defendant and Plaintiff are in agreement. Only one of the two cases Ms. Jones filed should proceed, and

staying or dismissing one would simplify the issues and the trial. However, this is the case that should move forward.

Whether discovery is complete or there is a trial date: Discovery has not commenced in either case, and there is no trial date. However, contrary to Ms. Jones' representations, this case is further along than the matter pending in the Middle District of Louisiana. The only Motion pending in Louisiana is Defendant's Motion to Stay or Dismiss. In this case, Defendant Kleinman has filed a Motion for First-Filed Injunction and has fulfilled the prerequisites to file a motion to dismiss under New Jersey's anti-SLAPP law, which he intends to file as soon as he receives permission from the Court to do so.

Ms. Jones cannot meet her burden to show that she will be burdened without a stay. However, the burden on Mr. Kleinman would be great, as he has spent significant resources pursuing this case rather than the one in Louisiana. Given that he made his decision to proceed in this Court because clear caselaw stated that this case should be the one that survives, he respectfully requests that the Court deny this Motion and grant his Motion for First-Filed Injunction.

2.3 Jones has waived any objection to proceeding in New Jersey

Finally, Jones has waived any objection to venue in the District of New Jersey by filing a Complaint with this Court. *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 this Court. As such, she has waived any objection to proceeding here. Her Motion should be denied.

3.0 CONCLUSION

For each and every reason discussed herein, Defendant Kleinman respectfully requests that the Court deny Ms. Jones' Motion to Stay.

Dated: February 6, 2025.

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Respectfully Submitted,

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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/ Vincent S. Verdiramo
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