

**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

REPLY IN SUPPORT OF MOTION FOR FIRST-FILED INJUNCTION

ORAL ARGUMENT REQUESTED

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1.0 INTRODUCTION

Plaintiff Amanda Jones filed the exact same case on the same day in this Court and in the Middle District of Louisiana. She filed the Complaint in this case first. The Louisiana Complaint was filed about seven hours later. The reason she provides for this unusual act is to state that she did it “to preserve all rights.” (ECF No. 1 at ¶¶ 6, 19; ECF No. 11-1 at 2; ECF No. 21 at 6). Kleinman and his counsel are still at a loss as to what that means.

Ms. Jones never identifies the “rights” this preserved. It seems that the argument was that Kleinman *might* have moved for dismissal in Louisiana under FRCP 12(b)(2) and then he *might* have won that motion. (ECF No. 11-1 at 1-2; ECF No. 21 at 6). And then... then what? Litigants face this challenge every day. They pick a jurisdiction, they file, they face a 12(b)(2) and if they lose, they either appeal or they re-file in the correct jurisdiction. What rights are preserved by hitting a defendant in two places at the same time with the same lawsuit?

All of the facts that Jones cites in her Complaint happened within nine months of her filing her Complaints, so she could not have been worried about the statute of limitations expiring. Of course, even if that were a concern, a 12(b)(2) dismissal would still give her the opportunity to relate back to the date of that filing to re-file in another jurisdiction.

Jones cites nothing to indicate that plaintiffs are permitted to simultaneously file duplicative lawsuits in two separate courts to create an insurance policy in case a 12(b)(2) motion happens to be successful in one of the cases.

Jones blames Mr. Kleinman for “requiring duplicative efforts” in New Jersey and Louisiana. It is difficult to square this “blame Mr. Kleinman” argument with the facts. Mr. Kleinman did not ask to be sued once, let alone twice. Ms. Jones designed this rollercoaster, built it with her own bare hands, bought a ticket on the ride she made, and now complains that someone

she dragged along with her, who never wanted to go on the ride in the first place, is responsible for her not enjoying the ride.

She also argues that the first-filed rule should not apply here. Defendant Kleinman disagrees. The first-filed rule clearly applies in this instance, necessitating that this case proceed and not the duplicative case subsequently filed in Louisiana. Moreover, any objection that Jones makes to proceeding in this Court should be ignored. Not only did she waive those objections by filing a Complaint in this Court in the first place, but she unnecessarily created each and every issue that she discusses in her Opposition. The first-filed rule is an equitable rule, and it should be applied against the party acting inequitably, Amanda Jones.

2.0 LEGAL ARGUMENT

Jones' argument starts to fray with its very opening. Plaintiff begins with the quote "the same lawsuit may be filed in different courts." ECF No. 21 at 4, citing *Muhammad v. State Farm Indem. Co.*, 719 F. Supp. 3d 397, 400 (D. N.J. 2024) "When this happens: what to do?" *Id.* One could be forgiven for wondering if Jones intended this quote to bamboozle the reader into thinking that the *Muhammad* court approving of the idea that a Plaintiff can file the same case in two different courts. That editing really does make it seem that this is what the *Muhammad* court was saying. But when we go to the case itself, we find a very different story.

The actual quote is: "*The same lawsuit may be filed in different courts. A plaintiff, for example, may sue in federal court in Connecticut, and the opposing party may then turn around and press the same issue in a federal court in New Jersey. When this happens: what to do?*" *Muhammad*, 719 F. Supp. 3d at 400 (emphasis added). So rather than the court stating with some approval that a party has the right to do what Jones did here, the court was recognizing the usual circumstances surrounding a first-filed analysis. *Muhammad* does not break new ground by

approving of a double-shot filing in two different courts by the same party, nor does any other case in any other jurisdiction. If one exists, Defendant cannot find it, and presumably Plaintiff would have found it. And while the first-filed-rule almost always is used to untangle dueling complaints filed in different jurisdictions by different parties, there is no justification for creating a new limitation on it, as doing so would simply license every plaintiff to file an array of complaints, to see how the dice roll in each jurisdiction.

Jones argues that this Court should ignore the first-filed rule and allow the Middle District of Louisiana to decide where this case is heard. However, given that Jones filed her Complaint in this case first, this is the Court that should decide the issue. *See E.E.O.C. v. Univ. of Pa.*, 850 F.2d 969, 971 (3d Cir. 1988) (holding that “the court which first has possession of the subject matter must decide it”); *see also Ethicon, Inc. v. Randall*, 2021 U.S. Dist. LEXIS 102119, at *24 (D. N.J. May 28, 2021), quoting *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 708 F. Supp. 1440, 1447 (D. N.J. 1989) (holding that “absent special circumstances, the prior pending action has priority in venue”). Regardless of the reason that Jones filed the Complaint in this case before she filed the Complaint in Louisiana, the fact remains that she and her counsel decided when to file each document. If she wished to proceed in Louisiana, nothing was stopping her from filing that Complaint first, or, better yet, only filing this lawsuit in one court.

Jones also argues that she *opened* her case in the Middle District of Louisiana first. *See* ECF No. 21 at 5. However, the relevant inquiry when determining which Court should keep this litigation is where the *Complaint* was filed first. *See Baatz v. Columbia Gas Transmission*, 814 F.3d 785, 790 (6th Cir. 2016) (the “dates to compare for chronology purposes of the first-to-file rule are when the relevant *complaints* are filed”) (emphasis added); *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 633 (9th Cir. 1991) (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). Jones filed the Complaint in this Court before she filed a complaint in the Middle District of Louisiana. This litigation belongs in this Court.

Finally, Plaintiff is correct that the “parties do not dispute the first-filed rule’s basic premise: If two lawsuits concern the same parties and the same issues, the second filed case typically is dismissed, transferred, or stayed.” ECF No. 21 at 4, citing *Muhammad*, 719 F. Supp. 3d at 400 (D. N.J. 2024). However, Plaintiff provides selective quotes from *Muhammad* to make it appear as though it is normal and acceptable for the same party to file the same suit in different courts. *See id.* It is not. Plaintiff argues that this Court should not apply the first-filed rule because it is an equitable rule and it would be inequitable to do so. *See* ECF No. 21 at 5-7. In reality, it would be inequitable *not* to apply the first-filed rule.

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, because the law is so crystal clear that this is how it should be done. 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, which clearly applies.

Jones asks this Court to disregard decades of caselaw and moot the work that Kleinman and his counsel did to litigate in this Court. What she requests is truly inequitable. Kleinman is not a man of unlimited means, and he does not have the massive external funding from politically oriented organizations that Jones enjoys. With unlimited funds from outside sources, Jones can afford to be wasteful and require duplicative efforts. Now, she asks the Court to stamp its seal of approval on this resource-draining gambit, ignore the precedent that Kleinman relied upon when

deciding where to focus his defense, and license a new tactic that seemingly has never been tried before, but makes no sense under the rules.

In her Opposition, the only reason that Jones provides for the supposed necessity of resolving this case in Louisiana is that she is supposedly a mere Louisiana public school librarian, and everything relevant to the case is in her home state. *See* ECF No. 21 at 8. However, this is not true. Plaintiff is a national figure. She has written a book that Amazon describes as a “NATIONAL BESTSELLER.” *See* ECF No. 10-5. She is the subject of a high-profile documentary produced by world-famous actress Sarah Jessica Parker. *See* ECF No. 10-6. She is a public figure who has inserted herself into the national conversation. And she is being well funded by external sources in this case. This is not just a case about some simple librarian. This is about shutting down a critic of the American Library Association.

Jones’ national prominence suggests her witnesses and sources of proof are not confined to Louisiana. She makes no effort to identify any character witnesses or other persons who will not be available for depositions if the case proceeds in this Court. Moreover, Kleinman did not “specifically direct his statements to a Louisiana audience,” as Jones insists. ECF No. 21 at 8. 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 that Jones should have considered *before* she elected to initiate this case in this Court.

This Court should apply the first-filed rule and enjoin Jones from continuing in Louisiana. He objects to proceeding there, and Jones has waived any objection that she had to proceeding in this Court by *initiating the lawsuit here*. *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.”). Finally, this Court should be mindful that if it rules to the contrary, it will be adding a chapter to the playbook for SLAPP plaintiffs. At some point, a later court will need to clean that mess up. Let us not create the mess in the first place.

3.0 CONCLUSION

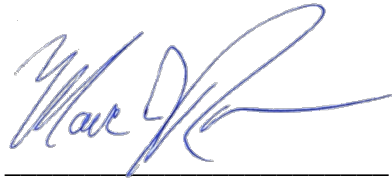
Plaintiff Amanda Jones has not provided this Court with any compelling reasons to disregard the first-filed rule. Defendant Dan Kleinman respectfully requests that the Court grant his Motion for First-Filed Injunction and enjoin Ms. Jones from proceeding in the Middle District of Louisiana for the pendency of this matter.

Dated: February 22, 2025.

Respectfully Submitted,

/s/ Vincent S. Verdiramo

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2025, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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