



Trouville v. Reprosorce Fertility Diagnostics, Inc.

2024 | Cited 0 times | E.D. California | March 19, 2024

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

DAVID TROUVILLE, individually on behalf of all others similarly situated,

Plaintiff, v. REPROSOURCE FERTILITY DIAGNOSTICS, INC., and DOES 1 through 50, inclusive,
Defendants.

Case No. 1:23-cv-00080-JLT-CDB ORDER MOTION TO TRANSFER (Doc. 7)

David Trouville brings this putative class action lawsuit against ReproSource Fertility, arising out of a computer systems that may have leaked his and potentially oth personal medical

information. (See generally Motion to Transfer, Stay, or in the . (Doc. 7.) The Court finds the matter suitable for decision without oral argument pursuant to Local Rule 230(g). For the reasons GRANTED and this action is TRANSFERRED to be consolidated with the Bickham action in the U.S. District Court for the District of Massachusetts.

I. BACKGROUND ReproSource Compl., Ex. A, Doc. 1-1 at ¶ 39.) As a healthcare provider, ReproSource obtains, stores, and transmits

patients, which includes its security n

(Id. at ¶¶ 2, 40.) Plaintiff is a patient of ReproSource, who provided ReproSource with his PII and PHI. (Id. at ¶ 11.)

On August 10, 2021, ReproSource discovered ransomware attack on its computer network, which informed the company that it fell prey to a cyber-security data breach. (Id. at ¶¶ 3, 76.) In October 2021, ReproSource sent a letter to Plaintiff, informing Plaintiff and

their PII and PHI. (Id. at ¶ 12.) ransomware attack, who stole the information, whether the ransom was paid, if Plaintiff and the

Id.)



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On October 20, 2022, Plaintiff, on behalf himself and individuals who were sent a letter informing them their PII and/or PHI was compromised in the this suit against Defendant in Kern County Superior Court. (Id. at ¶ 81.) Specifically, Plaintiff alleges that Medical Information Act, Cal. Civ. Code §§ 56, et seq.; The California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.; and theories of breach of contract and negligence. (Id. at ¶¶ 90 129.) Defendant removed the action to federal court thereafter. (Doc. 1.)

, wherein Defendant requests the Court transfer this action to the first-filed case of Bickham v. ReproSource Fertility Services, Inc., 1:21-cv- 11879, which is pending in the District of Massachusetts. (Doc. 7 at 7.) The matter is fully briefed (Doc. 11 13) and ripe for consideration and review.

II. LEGAL STANDARD The -to- . . which applies when two cases involving substantially similar issues and parties have been filed in different districts In re Bozic, 888 F.3d 1048, 1051 (9th Cir. 2018) (internal quotation marks and citations omitted); see also Ford v. [24]7.ai, Inc. .

case in the interest Bozic, 888 F.3d at 1051 (internal quotation marks and citations omitted). es three factors: chronology of the Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc., 787 F.3d 1237, 1240 (9th Cir. 2015) (footnote and citation omitted). This rule Id. (internal quotation marks and citation omitted).

III. DISCUSSION Defendant requests the Court to transfer, stay, or dismiss the action. (Doc. 7.) To begin, -filed Bickham ReproSource is headquartered the Court should transfer this action to the District of

Massachusetts. (Id. at 7.) In response, Plaintiff requests the Court exercise its discretion in applying the first-to-file rule, (Doc. 11 at 9), arguing that the balance of equities (Id. at 11 12.) s of residency, and requests that the Court ignore this declaration for purposes of determining proper venue. (Id. at 8 n.1.) The Court will first address the first-to-file , Kohn Law Grp., 787 F.3d arguments pertaining to balancing the equities and .

A. Chronology of the Lawsuits Kohn Law Grp., 787 F.3d at 1240. that the parties do not dispute that the Bickham plaintiffs filed their action first. (Id.; see generally Docs. 7, 11.) Regardless, this issue is easily resolved, as the Bickham plaintiffs filed their class action Complaint on November 19, 2021. See Bickham v. ReproSource Fertility Servs., Inc., 1:21-cv-11879- Bickham. To compare, Trouville filed this putative class action lawsuit in Kern County Superior Court on October 20, 2022, almost one year later. (Ex. A, Doc. 1-1 at 5.) This factor therefore weighs in favor of transfer under the first-to-file rule.

B. Similarity of Parties The second factor to consider is the similarity of the parties to the two actions. Kohn Law Grp., 787 F.3d at 1240. e held that the first-to-file rule does not Id. -to-file rule



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requires Id. (collecting cases). That is because the first-to-file rule *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d

93, 95 (9th Cir. 1982).

text, most district courts in this circuit compare the putative classes , 526 F. Supp. 3d 700, 705 (N.D. Cal. 2021) (citations omitted); see also *Adoma v. Univ. of Phx., Inc.* 711 F. Supp. 2d 1142, 1147 (E.D. Cal. 2010); , 542 F. Supp. 2d 1014, 1020 (N.D. Cal. 2008)

Jur.3d Actions § 284). *Murphy v. Sprint/United Mgmt. Co.*, No. 2:20-cv-00507-TLN-DB, 2021 WL

5853579, at *7 (E.D. Cal. Dec. 9, 2021) (citing *Adoma*, 711 F. Supp. 2d at 1147 48 and *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1295 (N.D. Cal. 2013)).

The Bickham Complaint is a lawsuit between Jasmyn Bickham, individually and on behalf of all others similarly situated, against the same Defendant in this case ReproSource. See Bickham, Doc. 1; Young éal is the same and sole defendant . In Bickham, like here, Plaintiff proposed the following putative class: persons whose Private Information was compromised as a result of the Data Breach discovered on or about August 10, 2021[,] and who were sent notice of th See id. at ¶ 123. On February 14, 2024, the Bickham court ormation was compromised

in the Security Incident and to whom ReproSource sent written notice of the Security Incident in or around October 2021 . . . Bickham, Doc. 71 at 2.

Trouville brings this action on behalf of the following putative class: were sent a letter informing them their PII and/or PHI was compromised in the Data Breach (the

-1 at ¶ 81.) The plaintiffs in both cases are alleged August 2021 data breach and are now suing ReproSource for the alleged disclosure of their personal information. It is difficult, if not impossible, to conclude that the parties are not substantially similar, particularly because the Trouville Bickham Young, 526 F. Supp. 3d at 705.

Plaintiff conservation of judicial resources because the Bickham action does not include a California

The Ninth Circuit has clearly stated that the substantially similar parties requirement does not require exact-named parties. See *Kohn Law Grp.*, 787 F.3d at 1240 -to-file rule merely by And, the residency of the classes is of no import. Young stinction between the parties, as Plaintiffs argue, is they are residents of different states. Although correct, this fact alone is not enough to Thus, the second factor weighs strongly in favor of applying the first-to-file rule.

C. Similarity of Issues Finally, the third factor of consideration is the similarity of the issues. *Kohn*



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Law Grp., 787 F.3d at 1240 only substantially Id. at 1240 Id. at 1241 (quoting Harris Cnty., Tex. v. CarMax Auto Superstores Inc., 177 F.3d 306, 319 (5th Cir. 1999)).

In Bickham, the Complaint alleges four causes of action: (1) negligence; (2) breach of contract; (3) breach of implied contract; and (4) breach of fiduciary duty. Bickham, Doc. 1 at 39 51. The Bickham plaintiffs allege ReproSource:

(1)

standard information security principles, despite obvious risks, and by allowing

(2) breached their duty owed to plaintiffs under Section 5 of the Federal Trade

Commission Act, 15 U.S.C. § 45, under HIPAA privacy laws, and under Massachusetts General Law, chapter 111, § 70E(b) ;

(3) breached their express and implied contracts with plaintiffs, agreeing to protect their

Private information according to HIPAA regulations and industry standards; and (4) breached

Id. at ¶¶ 136, 142 44, 153 86, 188.

The Bickham to utilize due to

Id. at 51. The Bickham plaintiffs also request of actual, compensatory, and statutory damages, as well as statutory penalties and punitive

damages. Id.

The Trouville putative class also brings four causes of action: (1) violation of the Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56, et seq. ; (2) violation 17200, et seq. ; (3) breach of contract; and (4) negligence. See Doc. 1 at 32 39.

Like the Bickham plaintiffs, here, Trouville alleges that ReproSource:

(1)

collectio (2) breached express contract obligations owed to Plaintiff and the class, which

Defendant[] or that Defendant[] gathered on [its] own, from disclosure, as set



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(3) business practices by knowingly failing to design,

oversee, and monitor its software and hardware system and protect Plaintiff, and that its actions es under the Federal Trade Commission Act, 15 U.S.C. § 45, and (4) violated the CMIA by disclosing medical information without Plaintiff and the

medical information. Doc. 1 at ¶¶ 97-98, 108-111, 118, 125. Plaintiff and his putative class request equitable relief, including restitution, actual and punitive damages, statutory damages, and injunctive relief.

Id. at 39-40.

Bickham action alleged

personal, private information, leaked during the August 2021 data breach. Kohn Law Grp., 787 F.3d at 1241. Other than the Bickham Massachusetts-specific law, and its claim for breach of implied contract as well as the Trouville

-specific laws and remedies in both cases closely parallel each other, and in fact are near Young, 526 F. Supp. 3d at 706. Both complaints ask for almost identical relief equitable relief, punitive damages, injunctive relief, etc. and both assert claims of negligence, breach of express contract, violations of HIPPA and the Federal Trade Commission Act, 15 U.S.C. § 45. [confidentiality] protection statutes Bickham MIA in this case and [ies] several statutory and common law theories by failing to protect its and allowing hackers to access their private personal and health information during the August 2021 data breach. Young, 526 F. Supp. 3d at 706; (Compare Bickham, Doc. 1, with Trouville, Ex. A, Doc. 1-1.)

Plaintiff states that his Complaint state state law . . . [which] dramatically changes the potential recovery for Plaintiff and putative class

members[.] (Doc. 11 at 11.) Plaintiff also argues that California has a greater interest in hearing and deciding this matter, given that Plaintiff is a California resident asserting California laws. (Id. at 12 courts from other jurisdictions . . . However, Young rejects these arguments: The mere fact

that Plaintiffs here assert their claims under California law . . . is not enough to overcome these similarities. Indeed, courts time after time have found legal issues to be substantially similar even when the subsequently filed action brought its claims under different state law. [citations.] This is

Id. at 706 (internal citations omitted). Accordingly, the Court concludes that the issues to be decided in Bickham issues raised in this instant lawsuit. Kohn Law Grp., 787 F.3d at 1240. The third factor therefore also weighs in favor of transfer.



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D. Exceptions to First-to-File Rule -to-file rule if the balance of convenience and Young, 526 F. Supp. 3d at 708 (citation omitted). The Ninth Circuit has provided three exceptions to the first-to- Alltrade, Inc. v. Uniweld Prods., Inc., 946 F.2d 622, 628 (9th Cir. 1991).

o Bickham and Trouville

should not be permitted to opportunistically invoke the first-to-file doctrine to avail itself of what (emphases and capitalizations omitted).)

However, [t]hese exceptions look at whether the party who filed the first-filed action did and not at the conduct of the defendant moving for a transfer of venue. Young, 526 F. Supp. 3d at 708; see also Alltrade, 946 F.2d at 627 that Uniweld filed its action with knowledge and in anticipation (emphasis added); Murphy satisfy declining the first-to-file rule include whether the first filing party did so in bad faith, as an

emphasis added) (citation omitted). Plaintiff has directed his equitable arguments against Defendant, not rather than the Bickham plaintiffs arguments regarding these three exceptions are therefore not relevant.

E. Residency Declaration Attached as Exhibit A to its Notice of Removal is the Declaration of Keena Hausmann, the Executive Director and Privacy Officer to Quest Diagnostics, Inc., the parent company of ReproSource. (Ex. A, Doc. 1-2, at ¶ 1.) corporation with its princi Id. at ¶ 2.) Motion that Bickham te

usmann, maintaining that such residency allegations ant may not attempt Id.) 1

When considering a motion to transfer venue, the Court may consider the residency 1 This is important because the transfer statute, 28 U.S.C. § 1404(a), could have origin Bozic, 888 F.3d at 1053 (quoting 28 U.S.C. § 1404(a) and citing Hoffman v. Blaski, 28 U.S.C. § 1391(b)(1). The Court must therefore determine before transferring the action to Massachusetts. Bozic, 888 F.3d at 1053. declarations of the moving defendant. See Fluence Energy, LLC v. M/V BBC Finland, 584 F. 1404(a) motion to transfer venue[,], a court may consider evidence outside of the pleadings but must draw all reasonable inferences and resolve factual conflicts in favor of the non- omitted) (cleaned up); see also Pacesetter, 678 F.2d at 97 n.4 (accepting declarations of Internet Brands, Inc. v. Whiting, No. CV 10-8768 PA (SSx), 2011 WL 13217758, at *4 (C.D. Cal. Feb. 14, 2011) in the Eastern District because Defendant declares that he resides in Jacksonville, Texas, which is located in the Eastern Distric .

Additionally, Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 81 (2014) (citing

28 U.S.C § 1446(a)). not only contains the citizenship allegations of the parties to establish diversity jurisdiction but also attaches the declaration of Hausmann. (Doc. 1 at ¶ 17 (citizenship allegation of



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ReproSource); Ex. A, Doc. 1-2, at ¶ 3.) Normally, i court decides, by a preponderance of the evidence, whether [subject-matter jurisdiction] has been

Owens, 574 U.S. at 88 (citation omitted).

Plaintiff challenges /citizenship representations contained in its motion to transfer and its Notice of Removal. Even still, Plaintiff has not moved for remand based and has not proffered proof that Defendant is not a resident of Massachusetts. Regardless, t motion, Fluence Energy, 584 F. Supp. 3d at 886, and to its Notice of Removal. See Burns v.

, No. CV 22-03007-MWF (MARx), 2022 WL 2701989, at *2 i.e.,

citizenship OVERRULED. ///

CONCLUSION Because the Bickham action is the first-filed case, with similar parties and similar issues to this case, and because no exception applies to retain jurisdiction over this matter, transfer to the District of Massachusetts is appropriate. Based upon the foregoing, the Court ORDERS:

(1) Transfer, Stay, or in the Alternative, Dismiss (Doc. 7) is

GRANTED. (2) The matter is TRANSFERRED to the United States District Court for the District of

Massachusetts, to be consolidated with Bickham v. ReproSource Fertility Services, Inc., 1:21-cv-11879-GAO.

IT IS SO ORDERED. Dated: March 19, 2024

