

Two Is Not Always Better Than One – Court Dismisses TCPA Class Action Under First-to-File Doctrine

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If you are a defendant in a TCPA class action and get hit with a second similar class action, don't forget the often over-looked first-to-file doctrine. Just last week, a federal court dismissed (without prejudice) a TCPA class action in favor of an earlier-filed class action under the first-to-file doctrine. See *Winters v. Quicken Loans*, 2021 U.S. Dist. LEXIS 47267 (D. Ariz. March 12, 2021).

The first-to-file doctrine is a doctrine of federal comity that permits a district court to decline jurisdiction when a complaint involving the same parties and same issues is filed in another district. The doctrine is discretionary, although as the Court noted, it “should not be disregarded lightly.” The Court considers three straightforward threshold factors: (1) chronology of the lawsuits; (2) similarity of the issues; and (3) similarity of the parties. As to the second and third factors, there need not be complete overlap of issues and parties – substantial similarity is enough. In *Winters*, the Court had little trouble concluding that all of the first-to-file factors were met with respect to an earlier TCPA class action filed against defendant in the Eastern District of Michigan, as there was substantial overlap of the issues and proposed classes.

As the Court noted, the first-to-file doctrine “is not a rigid or inflexible rule to be mechanically applied.” There are exceptions to its application, including bad faith, anticipatory suit, forum shopping, or where the balance of convenience weighs in favor of the later-filed action. In *Winters*, however, the Court found no reason to depart from the first-to-file rule.

In many cases, the most interesting question with respect to the first-to-file doctrine is what is the proper course of action – should the court transfer the later-filed case, stay it, or dismiss it? Once again, there are no hard and fast rules, and much discretion is left to the district court. The *Winters* Court did not discuss transfer, which may not have been an option given the parties' domiciles. While the defendant had requested the *Winters* Court to stay the matter, the Court ultimately determined that dismissal without prejudice was preferred over a stay of the case. While stays are preferred when the first action may ultimately be dismissed, in *Winters*, the Michigan court had already denied defendant's motion to dismiss so a dismissal of the first case was unlikely. The *Winters* Court was also concerned by the indefinite nature of a stay. Thus, it ultimately concluded to dismiss the case without prejudice.

While those of us at TCPAWorld know that there may sometimes be strategic value to having two

competing class actions, but in many cases, they just increase the time, cost and uncertainty for a defendant. In those situations, don't forget the first-to-file doctrine!

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