

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

HESS KENNEDY CHARTERED, LLC;
LAURA L. HESS; EDWARD T. KENNEDY;
LAURA HESS & ASSOCIATES, P.A.;
HESS KENNEDY HOLDINGS, LTD.;
THE CONSUMER LAW CENTER, LLC;
THE CAMPOS CHARTERED LAW FIRM;
JEFF CAMPOS, P.A.; JEFFREY S. CAMPOS;
LEGAL DEBT CENTER, LLC,

Plaintiffs,

vs.

CHASE BANK USA, N.A.,

Defendant.

CASE NO.: 08-cv-60321-WRD

**DEFENDANT CHASE BANK USA, N.A.’S MOTION TO DISMISS OR STAY OR, IN
THE ALTERNATIVE, TO TRANSFER TO THE DISTRICT OF DELAWARE
WITH SUPPORTING MEMORANDUM OF LAW**

Defendant Chase Bank USA, N.A. (“Chase”), respectfully moves the Court to dismiss or stay this action pursuant to Fed. R. Civ. P. 12 and under the “first-filed” rule because a Delaware action, in which the Plaintiffs herein are named as Defendants and involving the same issues, was filed first. In the alternative, Chase moves the Court to transfer this action, pursuant to 28 U.S.C. §1404(a), to the United States District Court for the District of Delaware. In support thereof, Chase alleges:

All of the plaintiffs herein (collectively, the “Hess Parties”) are defendants in a nearly identical action brought by Chase in the District of Delaware (the “Delaware Action”) one week **before** this action (the “Florida Action”) was filed. This second-filed Florida Action is, in substance, the Hess Parties’ “response” to Chase’s Delaware Action, as it arises out of the same

events, and involves the same subject matter, as the first-filed Delaware Action. In this second-filed Florida Action, the Hess Parties seek only a declaration that they are not liable to Chase in the Delaware action. They even attach a copy of Chase's first-filed Delaware Complaint as an exhibit to their own Complaint in this Court. Under the "first-filed" rule, which is embraced by the Eleventh Circuit, this action should either be dismissed or stayed in deference to the first-filed Delaware Action. In the alternative, this second-filed Florida Action should be transferred to the District of Delaware pursuant to 28 U.S.C. §1404(a).

I. STATEMENT OF FACTS

Chase brought suit against the Hess Parties and three additional affiliated entities in the District of Delaware on February 29, 2008, one week before the Florida Action was commenced.¹ In the Delaware action, Chase alleges that the Hess Parties caused more than 3,800 Chase credit cardmembers to withhold more than \$25 million dollars of outstanding debt due to Chase through schemes involving unlawful debt elimination and other deceptive practices. In furtherance of these schemes, the Hess Parties, inter alia, caused Chase cardmembers to assert sham billing error disputes under the Fair Credit Billing Act, 15 U.S.C. §1666, et seq., and frivolous lawsuits against Chase as a pretext for not paying their valid credit card debts. They also caused cardmembers to raise meritless dilatory defenses or counterclaims in collection actions brought by Chase to recover on defaulted credit card balances.

In the Delaware Action, Chase therefore asserts claims for tortious interference with contract, abuse of process, conspiracy and violations of the Delaware Deceptive Trade Practices

¹ A copy of Chase's Delaware Complaint, with exhibits, is attached as Exhibit 1. In addition to naming all of the Hess Parties as defendants, Chase's Delaware Complaint was also brought against Hess Kennedy Company Chartered BWI (organized in the Cayman Islands), The Consumer Law Center of Delray Beach, LLC and The Consumer Law Center of Boca Raton, Inc.

Act, 6 Del. Code §2531, et seq., and the Delaware Consumer Fraud Act, 6 Del. Code §2511, et seq. Chase seeks declaratory, injunctive and monetary relief against the Hess Parties.² Significantly, in the Delaware Action, Chase attached examples of the legally invalid form letters devised by the Hess Parties to implement their unlawful schemes. (See Exs. I, J, K and L to Chase's Delaware Complaint, attached as Ex. 1).

This second-filed Florida Action arises out of the same transactions and occurrences that are the subject of Chase's claims against the Hess Parties in the Delaware Action. In fact, in this action, the Hess Parties seek to interfere with the Delaware action by requesting a declaration that they are not liable to Chase in the Delaware Action. Thus, they attach a copy of Chase's Complaint in the Delaware Action to their Complaint in this case and further attach examples of some of the same form letters that are the subject of Chase's Delaware Complaint.³ The Hess Parties ask this Court to declare that the same form letters are not tortious or criminal in nature and do not violate the law. [DE# 1- Prayer for Relief].

In particular, the Complaint at issue here alleges:

22. On February 29, 2008, CHASE filed a lawsuit in the District of Delaware against all of the named plaintiffs in this matter in Case No. 1:08-cv-00121-UNA. (Exhibit J).

23. In that lawsuit, CHASE alleges that the HESS plaintiffs committed the torts of tortious interference with contractual

² As set forth in Chase's Delaware Complaint, both the Florida Attorney General and the North Carolina Attorney General recently filed state court lawsuits against certain of the Hess Parties alleging unfair and deceptive business practices. The West Virginia Attorney General also is conducting an investigation into the Hess Parties' misconduct. (See Chase's Delaware Complaint, Ex. 1, ¶26).

³ For example, compare Hess Complaint in this action Exs. A and F with Chase's Delaware Complaint Ex. J; Hess Complaint Exs. B and H with Chase's Delaware Complaint Ex. K; and Hess Complaint Exs. C and G with Chase's Delaware Complaint Ex. I.

relations; abuse of process; violation of Delaware deceptive trade practices act; Delaware consumer fraud act; and, conspiracy.

* * *

42. CHASE contend[s] that the HESS letters are without legal merit, are criminal in nature, subject HESS to a claim for tortious interference with contractual relations, and do not commence valid credit card billing disputes.

43. CHASE’S contention that HESS letters are without legal merit, are criminal in nature, subject HESS to a claim for tortious interference with contractual relations, and do not commence valid credit card billing disputes, have left HESS in doubt and uncertain about their rights

WHEREFORE, for the reasons set forth above, Plaintiffs request relief as follows:

* * *

2. A Declaration that the letters attached are not tortious in nature;

3. A Declaration that the letters attached are not criminal in nature;

4. A Declaration that the letters attached have legal merit;

* * *

6. A Declaration that [the letters attached] commence valid credit card billing disputes

Unquestionably, these “claims” raised by the Hess Parties in the second-filed Florida Action amount to nothing more than denials of the allegations made by Chase in the Delaware Action. Such denials can, and should, be raised by motion or answer to Chase’s Delaware Complaint. To the extent the Hess Parties seek affirmative relief from this Court, their “claims” are so closely related to Chase’s claims against them in the first-filed Delaware Action that they should have been brought (if at all) as a compulsory counterclaim in the Delaware Action. See Fed. R. Civ. P. 13(a)(1)(A), Compulsory Counterclaims (“[a] pleading must state as a counterclaim ...

any claim that ... the pleader has against an opposing party if the claim arises out of the transaction or occurrence that is the subject matter of the opposing party's claim ...”).

As a result of the Hess Parties' commencement of the Florida Action, there are now two separate lawsuits between Chase and the Hess Parties pending in two different federal judicial districts with respect to the exact same subject matter. This is precisely the situation -- the prospect of burdensome and wasteful duplicative litigation -- that the “first-filed rule” was designed to remedy. Accordingly, Chase respectfully asks this Court to dismiss or stay this second-filed Florida Action in deference to the first-filed Delaware Action.

In the alternative, the Florida Action should be transferred to the District of Delaware pursuant to 28 U.S.C. §1404(a). As discussed herein, transfer would be appropriate because: (i) all of the Hess Parties are party-defendants in the first-filed Delaware Action; (ii) the Florida Action can be consolidated with the Delaware Action following transfer as both involve the same subject matter; (iii) Chase is located and has its national card headquarters in Delaware; (iv) the form letters that are the subject of both the Delaware Action and the Florida Action were sent to Chase in Delaware; (v) the Hess Parties solicited Chase cardmembers in Delaware to procure their services; (vi) the agreements between Chase and its cardmembers were entered into in Delaware and are governed by Delaware law; and (vii) Chase's documents are located or electronically available in Delaware and Chase's witnesses, including Chase employees and cardmembers affected by the Hess Parties' unlawful schemes, reside in or in close proximity to Delaware.

II. ARGUMENT

A. The Florida Action Should Be Dismissed or Stayed in Deference to the Delaware Action Pursuant to the First-Filed Rule

The Eleventh Circuit recognized in Manuel v. Convergys Corp., 430 F.3d 1132, 1138 n. 3 (11th Cir. 2005), that the “first-filed rule,” upon which Chase relies, is part of the federal common law. It explained:

Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule We are no exception Moreover, we require that the party objecting to jurisdiction in the first-filed forum carry the burden of proving “compelling circumstances” to warrant an exception to the first-filed rule.

Id. at 1135, citing, *inter alia*, Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Haydu, 675 F.2d 1169, 1173-74 (11th Cir.1982) (“Principles of comity come into play when separate courts are presented with the same lawsuit. When faced with such a dilemma, one court must yield its jurisdiction to the other In [the] absence of compelling circumstances, the court initially seized of a controversy should be the one to decide the case.”). See also Supreme Int’l Corp. v. Anheuser-Busch, Inc., 972 F. Supp. 604, 606 (S.D. Fla. 1997) (“[T]he ‘first-filed’ rule ... holds that when parties have instituted competing or parallel litigation in separate federal courts, the court initially having jurisdiction should hear the case The primary purposes of the rule are to conserve judicial resources and avoid conflicting rulings The Eleventh Circuit, in addition to most other circuits, follows this rule.”); Tingley Systems, Inc. v. Bay State HMO Management, Inc., 833 F. Supp. 882, 887 (M.D. Fla. 1993) (the basis for the first-filed rule is “the doctrine of federal comity which requires the federal district courts to refrain from interfering with each others’ affairs in order to avoid duplication of judicial resources and conflicting decisions”).

Here, it is undisputed that the Delaware Action was filed first on February 29, 2008, while the Florida Action was filed second on March 7, 2008. As shown above, the Florida Action arises out of the same facts as, and essentially asserts the Hess Parties' defenses to, Chase's claims in the Delaware Action. Under the first-filed rule, the second-filed Florida Action should be dismissed or stayed in deference to the first-filed Delaware Action. See Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 95-96 (9th Cir. 1982) (affirming district court's dismissal of second-filed action where it involved same central questions as first-filed action, even though different remedies were sought); Product Engineering & Mfg., Inc. v. Barnes, 424 F.2d 42, 44 (10th Cir. 1970) (affirming district court's dismissal of second-filed action where the matters asserted in that action "would be a defense" to the claims asserted in the first-filed action).

The first-filed rule applies even if service of the second-filed complaint was effected before service of the first-filed complaint because the jurisdiction of the court relates back to the time of filing the complaint and not the date of service. Barnes, 424 F.2d at 44; Medtronic, 678 F.2d at 96 (further holding that it would be inappropriate to give priority to the date of service where plaintiffs in second-filed action had knowledge of the first-filed action when they commenced suit, as the Hess parties did here).⁴

Application of the first-filed rule is also warranted here since the Delaware Action encompasses more parties and a greater scope of the existing controversy. The Delaware Action includes three other Hess-related defendants in addition to the Hess Parties that instituted the instant action, i.e. - Hess Kennedy Company Chartered BWI, The Consumer Law Center of

⁴ That the Hess Parties were fully aware of the Delaware action when they filed suit in Florida is established by the fact that they attached a copy of Chase's Delaware Complaint as Exhibit J to the Hess Complaint in this action.

Delray Beach, LLC and The Consumer Law Center of Boca Raton, Inc. As the Eleventh Circuit reasoned in Haydu:

Principles of comity suggest that a court having jurisdiction over all matters in dispute should have jurisdiction of the case. Otherwise, the fractioned dispute would have to be resolved in two courts Since the state court had jurisdiction of the entire matter, including Merrill Lynch's motion for arbitration under the federal act, and the federal forum had only the motion seeking arbitration, the federal court should yield jurisdiction to the state court which had all matters before it. Additionally, the state court had prior jurisdiction

675 F.2d at 1173. Although Haydu involved suits pending in state court and federal court, the Eleventh Circuit noted that the same principle of comity would apply if the competing courts were both federal courts. Id. at 1174.

As noted above, the party objecting to application of the first-filed rule has the heavy burden of proving that "compelling circumstances" warrant an exception to the rule. Manuel, 430 F.3d at 1135. "Impermissible forum shopping" by a potential defendant is sometimes urged as such a compelling circumstance. Anheuser-Busch, 972 F. Supp. at 608. For example, where a potential defendant, on notice of a forthcoming lawsuit, files an anticipatory declaratory judgment action in its home forum, the opposing party sometimes argues that the first-filed rule should not be followed because it would be inequitable to reward the plaintiff for forum shopping. Id. at 606. Nevertheless, the first-filed rule is so firmly established in the Eleventh Circuit that "even if those conditions are present, the first filed action is preferred." United Wu Enterprises, Inc. v. Mon Cheri Bridals, LLC, No. 2:05-cv-143, 2007 WL 646964, at *2 (M.D. Fla. Feb. 27, 2007) (citation omitted).

In the present case, it cannot be argued that Chase, in filing first, engaged in forum shopping. Chase's Delaware Complaint was not an anticipatory claim for declaratory judgment in the nature of a defense to a claim the Hess Parties might file. On the contrary, Chase asserted

affirmative claims against the Hess Parties. More importantly, it was Chase's Delaware Complaint that was filed first. If there was any improper forum shopping, it is the Hess Parties, not Chase, who attempted it by instituting a separate action in Florida seeking a declaration that they are not liable to Chase on the very claims asserted by Chase in the Delaware Action, rather than filing a counterclaim in the Delaware Action.

Another factor sometimes urged as a compelling circumstance justifying a departure from the first-filed rule is that "judicial economy would best be served by trying the case in [the second-filed] district." Anheuser-Busch, 972 F. Supp. at 607. "Convenience for the plaintiff" does not equate to "judicial economy," however. Thus, even if it might be more "convenient" for the plaintiff in the second-filed action to litigate the case in the second-filed district, this does not amount to a compelling circumstance that would warrant a departure from the first-filed rule.

As Judge Davis emphasized in Anheuser-Busch:

Supreme has failed to show that judicial economy would best be served by trying the case in this district [the Southern District of Florida]. Certainly, it would be more convenient for Supreme, a Florida corporation with most of its offices and personnel here. However, A-B, based in St. Louis, could make the same argument for trying the case in Missouri. And while A-B is certainly a national corporation, the trademark right that Supreme purchased and has put at issue comes from a Minnesota corporation and is marketed nationally. Thus, there are equally strong considerations for trying the case in Missouri or Florida.

Supreme has not demonstrated a compelling reason, such as judicial economy or impermissible forum shopping, to warrant departure from the first-filed rule.

972 F. Supp. at 607-08.

Likewise, in the present case, even if the Hess Parties argue that it is more convenient for them to litigate in Florida because they are located here, that is not a "compelling circumstance" sufficient to disregard the first-filed rule. As was the case in Anheuser-Busch, there are "equally

strong” -- indeed, even stronger -- considerations for hearing this case where it was first filed in Delaware. Among other things: (a) Chase is located and has its national card headquarters in Delaware; (b) form letters that are the subject of both the Delaware action and the Florida Action were sent to Chase in Delaware;⁵ (c) the Hess Parties solicited Chase cardmembers in Delaware to procure their services;⁶ (d) the agreements between Chase and its cardmembers were entered into in Delaware and are governed by Delaware law;⁷ (e) Chase’s documents are located or electronically available in Delaware;⁸ and (f) witnesses, including Chase employees and cardmembers affected by the Hess Parties’ unlawful schemes, reside in or in close proximity to Delaware.⁹

Moreover, as in Anheuser-Busch, the conduct of the Hess Parties that is at issue is nationwide in scope and not restricted to Florida. The Hess Parties solicit consumers via the Internet throughout the country (including Delaware) to purchase their services;¹⁰ they boast that they will “associate with ... hand-picked affiliate attorneys located throughout the country;”¹¹ and they are being sued or investigated not only by the Florida Attorney General but also by the

⁵ See Exs. I, J, K and L to Chase’s Delaware Complaint, Ex. 1; Exs. A, C, F and G to the Hess Parties’ Complaint in the present action.

⁶ See Chase’s Delaware Complaint, Ex. 1, ¶29 and Ex. G.

⁷ See Chase’s Delaware Complaint, Ex. 1, ¶30 and Ex. H.

⁸ See Affidavit of John C. Simons (“Simons Affidavit”), ¶6, attached as Exhibit 2.

⁹ See Simons Affidavit, Ex. 2, ¶7; Chase’s Delaware Complaint, Ex. 1, ¶¶38, 42.

¹⁰ See note 6 supra.

¹¹ See Chase’s Delaware Complaint, Ex. 1, ¶28 and Ex. G.

North Carolina and West Virginia Attorneys General.¹² Finally, the Hess Parties are already defendants in the first-filed Delaware Action and can assert their declaratory judgment claims against Chase as a counterclaim to Chase's Delaware Complaint.

Accordingly, to prevent burdening the courts and the parties with duplicative proceedings, this Court should dismiss or stay the instant second-filed Florida Action in deference to the first-filed Delaware Action. See Mon Cheri Bridals, 2007 WL 646964, at *4 (dismissing second-filed Florida action in favor of first-filed New Jersey action); Anheuser-Busch, 972 F. Supp. at 608 (staying second-filed Florida action in favor of first-filed Missouri action); New England Machinery, Inc. v. ConAgra Pet Products Co., 827 F. Supp. 732, 733 (M.D. Fla. 1993) (district court may dismiss or stay an action "so that the issues presented 'can be resolved [first] in [the] earlier filed action pending in another district court'") (citation omitted).

Courts which have "stayed," as opposed to dismissed, the second-filed action have done so where there was some reason to have the court in the first-filed action rule initially on the application of the first-filed rule. E.g., Anheuser-Busch, 972 F. Supp. at 607. Here, however, there is no question that the first-filed rule is followed by courts in the District of Delaware. As stated in Time Warner Cable, Inc. v. USA Video Technology Corp., 520 F. Supp. 2d 579 (D. Del. 2007):

Where two lawsuits involving the same claims are filed in different jurisdictions, the first-filed action is given preference. The first-filed rule reduces multiple conflicting decisions which may require

¹² See Chase's Delaware Complaint, Ex. 1, ¶26 and Ex. C. The fact that the Florida Attorney General has sued certain of the Hess Parties in state court is not a compelling circumstance that would justify a departure from the first-filed rule. See Roy v. Alliance Capital Mgt. L.P., No. 8:01-CV-2449-T-24MSS, 2002 WL 32657085, at *2 (M.D. Fla. March 13, 2002).

separate appeals, and ensures that litigants receive a single determination of their controversy. The Third Circuit applies the first-filed rule to litigation that involves the same subject matter Where there is federal concurrent jurisdiction over a matter, “the court which first has possession of the subject must decide it.” This court has held that the first-filed action is determined by “which court first obtains possession of the subject of the dispute, not the parties of the dispute.” This interpretation of the rule ensures that the first-filed rule “achieve[s] resolution in a single lawsuit of all disputes from common matters.”

Id. at 585-86 (footnote omitted). Therefore, Chase respectfully suggests that it would be appropriate for this Court to dismiss, rather than stay, the Florida Action on the basis of the first-filed rule.

B. In the Alternative, the Florida Action Should Be Transferred to the District of Delaware Pursuant to 28 U.S.C. §1404(a)

The law governing transfer of venue is set forth in 28 U.S.C. §1404(a), which authorizes a district court “[f]or the convenience of the parties and witnesses, in the interest of justice ... [to] transfer any civil action to any other district or division where it might have been brought.” The purpose of Section 1404(a) “is to provide for an ‘individualized, case-by-case consideration of convenience and fairness’ ... in order to “prevent the waste of time, energy and money, and to protect litigants, witnesses, and the public from unnecessary inconvenience and expense.” Cellularvision Tech. & Telecomms., L.P. v. Cellco Partnership, No. 06-60666-CIV, 2006 WL 2871858, at *2 (S.D. Fla. Sept. 12, 2006) (Dimitrouleas, J.) (hereafter “Cellco”) citing Van Dusen v. Barrack, 376 U.S. 612 (1964).

Whether to transfer venue involves a two-step inquiry. First, the alternative venue must be one in which the action could originally have been brought by the plaintiff. Cellularvision Techn. & Telecomms., L.P. v. Alltel Corp., 508 F.Supp. 2d 1186, 1189 (S.D. Fla. 2007). “[A]n action ‘might have been brought’ within the meaning of §1404(a) when jurisdiction is proper, venue is proper and the parties are amenable to service of process in the transferee forum.”

Cellco, 2006 WL 2871868, at *2. This requirement is easily satisfied here, since Chase is located and has its national card headquarters in Delaware and a substantial part of the events giving rise to this lawsuit occurred there. Jurisdiction and venue would exist in Delaware over the declaratory judgment claims asserted by the Hess Parties in the Florida Action, and Chase would be amenable to service of process in Delaware since it is located there. Therefore, it is clear that the Florida Action could originally have been brought in the District of Delaware.

The second step involves an analysis of various elements, including without limitation the plaintiff's right to choose the forum, the pendency of related litigation in the transferee forum, the public interest, the convenience of the parties and the witnesses, the relative ease of access to sources of proof and the availability and cost of process to compel the presence of witnesses. Cellco, 2006 WL 2871868, at *2; Stateline Power Corp. v. Kremer, 404 F. Supp. 2d 1373, 1380 (S.D. Fla. 2005); Thermal Techs., Inc. v. Dade Serv. Corp., 282 F. Supp. 2d 1373, 1376 (S.D. Fla. 2003); Digeo, Inc. v. Gemstar-TV, 2007 WL 295539, at *3 (W.D. Wash. Jan. 29, 2007).

In this case, the pendency of the first-filed Delaware Action is a factor that clearly outweighs the Hess Parties' choice of Florida as the forum for their second-filed lawsuit. "The fact that a related action is pending in the proposed transferee district is an important consideration that can override plaintiff's choice of forum because transfer of the second action will promote judicial economy and avoid the possibility of inconsistent results." 17 Moore's Federal Practice §111.13[1][o][i], at p.111-92 (3d ed. 2003). The United States Supreme Court itself has instructed that "[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that §1404(a) was designed to prevent." Continental Grain Co. v. The FBL-

585, 364 U.S. 19, 26 (1960). The interests of justice and the convenience of the parties and witnesses are ill-served when federal cases arising out of the same circumstances and dealing with the same issues are allowed to proceed separately. Prudential Ins. Co. of Am. v. Rodano, 493 F.Supp. 954 (E.D. Pa. 1980). See also Digeo, Inc. v. Gemstar-TV, 2007 WL 295539, at *4 (W.D. Wash. 2007) (“[l]itigation of related claims in the same tribunal is strongly favored because it facilitates efficient, economical and expeditious pre-trial proceedings and discovery and avoid[s] duplicitous [sic] litigation and inconsistent results”) (citation omitted); Payne v. AHFI Netherlands, B.V., 482 F. Supp. 1158, 1164 (D.C. Ill. 1980) (“[t]hat related actions are pending in another federal district clearly is a factor to be considered when determining whether the suit in question should be transferred”); Larsen v. Pioneer Hi-Bred Intern., Inc., No. 4:06-cv-0077-JAJ, 2007 WL 3341698, at *9 (S.D. Iowa Nov. 9, 2007) (transfer to another forum is especially appropriate where two cases involving the same subject matter are pending in two different courts); Codex Corp. v. Milgo Elec. Corp., 553 F.2d 735, 739 (1st Cir.1977) (“[t]he pendency of related litigation in another forum is a proper factor to be considered in resolving choice of venue questions”).

The remaining factors also weigh heavily in favor of transferring the Florida Action to the District of Delaware. As discussed above, Chase is located in Delaware and has its national card headquarters there. Although the Hess Parties are located in Florida, they are already defendants in the first-filed Delaware Action brought by Chase. Moreover, the Hess Parties offer and provide their services over the Internet to consumers nationwide, including Chase cardmembers in Delaware. In addition, form letters devised by the Hess Parties that Chase claims are unlawful were sent to Chase in Delaware and the cardmember agreements with which Chase alleges the Hess Parties tortiously interfered were entered into in Delaware and are

governed by Delaware law. Clearly, it is neither unreasonable nor unfair for the Florida Action to be transferred to Delaware. The public interest would also be well served by a transfer since a transfer will eliminate duplicative litigation in the federal courts and the Hess Parties' unlawful schemes were nationwide in scope.

Furthermore, as set forth in the Simons Affidavit (Ex. 2), Chase's witnesses reside in Delaware or its neighboring state Maryland and Chase's documents are located or electronically available in Delaware. Many, if not all, of the same witnesses will be called in the Delaware Action and in the Florida Action. Thus, it would clearly be more convenient and efficient to hear both actions in Delaware. By contrast, maintaining the Florida Action will impose "a greater economic hardship" on all parties since they will be required to litigate in two forums instead of one. Tingley, 833 F. Supp. at 887.

An additional consideration in deciding whether to transfer is whether the action can be consolidated in the transferee forum. E.g., Berg. v. First Am. Bankshares, Inc., 576 F. Supp. 1239, 1243-44 (S.D.N.Y. 1983); Hervey v. U.S., 450 F. Supp. 1148, 1149 (E.D. Wis. 1978). Federal Rule of Civil Procedure 42(a) permits consolidation of "actions before the court [which] involve a common question of law or fact ... to avoid unnecessary costs or delay." The district court has "broad discretion" to consolidate proceedings. Honeywell Int'l Inc. v. Audiovox Comm. Corp., No. 04-1337-KAJ, 2005 U.S. Dist. LEXIS 22933, at *7 (D. Del. May 18, 2005). One could hardly articulate a more similar set of core facts and issues than those asserted by Chase in the first-filed Delaware Action and by the Hess Parties in the second-filed Florida Action. See Honeywell, 2005 U.S. Dist. LEXIS 22933, at *11 ("Honeywell's motions to consolidate will be granted because the cases certainly do involve common questions of law and

fact”). Given the likelihood the Florida Action will be consolidated with the Delaware Action following transfer to the District of Delaware, Chase’s motion to transfer should be granted.

III. Rule 7.1 Certification

The undersigned counsel attempted to contact Plaintiffs’ counsel on two occasions prior to filing this Motion in an effort to resolve the issues raised by this Motion. Additional attempts to contact Plaintiffs’ counsel were made by Chase’s Delaware counsel. As of the time of filing this Motion, Defendant’s counsel have traded calls with Plaintiffs’ counsel but have not communicated.

IV. CONCLUSION

For all of the foregoing reasons, Defendant Chase Bank USA, N.A. respectfully requests dismissal of this action or entry of a stay pending the outcome of the Delaware Action. Alternatively, Chase prays for transfer of this action to the United States District Court for the District of Delaware.

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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system on April 1, 2008 which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

s/ Dennis M. Campbell

Dennis M. Campbell

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