UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WESCO, INC., et al.,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.
_____/

Case No. 2:25-cv-11712

Honorable Susan K. DeClercq
United States District Judge

OPINION AND ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER (ECF No. 19; 20), TRANSFERRING THE CASE, DENYING DEFENDANT'S MOTION TO DISMISS THE INITIAL COMPLAINT AS MOOT (ECF No. 21; 22), AND DENYING DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT WITHOUT PREJUDICE (ECF Nos. 30; 31)

With accusations of forum-shopping volleyed from both parties, before this Court is a battle over venue. Specifically, Defendant Blue Cross Blue Shield of Michigan (BCBSM) asks this Court to transfer this class action to the Western District of Michigan because there is a nearly identical case pending against BCBSM that was filed first there. Plaintiffs contend that venue in the Eastern District of Michigan is proper and that transferring would entertain BCBSM's attempt to forum-shop. For the reasons provided below, this Court will grant BCBSM's motion to transfer, deny as moot its motion to dismiss the original complaint, and deny without prejudice its motion to dismiss the amended complaint.

I. BACKGROUND

On July 1, 2022, a company called Tiara Yachts, Inc. ("Tiara Yachts") filed a lawsuit against BCBSM in the Western District of Michigan. *See Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan*, No. 1:22-cv-00603 (W.D. Mich. July 1, 2022), ECF No. 1; *see also Tiara Yachts, Inc. v. Blue Cross Blue Shield of Mich.*, 138 F.4th 457, 462 (6th Cir. 2025). In that suit, Tiara Yachts asserts that BCBSM was an administrator for Tiara Yachts' self-funded health benefits plan through an Administrative Services Contract (ASC) executed in January 2006. *See* ECF No. 20-2 at PageID.131; *see also* 138 F.4th at 461. Tiara Yachts alleges it terminated the ASC in December 2018 because BCBSM violated the Employee Retirement Income Security Act (ERISA) by wrongfully charging self-interested and "error-correcting fees" through "flip logic" and its "Shared Savings Program" (SSP). *See* ECF No. 20-2 at PageID.131, 135–40; *see also* 138 F.4th 461–62. The SSP, Tiara Yachts alleges, allows BCBSM to retain 30% of payments recovered or prevented from a practice of "mistakenly" overpaying claims and then correcting these mistakes. *See* ECF No. 20-2 at PageID.137–39; *see also* 138 F.4th at 462. Accordingly, Tiara Yachts alleges that BCBSM breached its fiduciary duties (Count I) and "engaged in prohibited transactions" (Count II) under ERISA. *See* ECF No. 20-2 at PageID.146–49; *see also* 138 F.4th at 462.

BCBSM sought dismissal of Tiara Yachts' complaint, and on February 27, 2023, United States District Judge Robert J. Jonker granted BCBSM's motion to dismiss, finding that Tiara Yachts had not plausibly alleged that BCBSM acted as an ERISA fiduciary when conducting flip logic or SSP transactions, and that ERISA could not provide Tiara Yachts' requested relief. *See* ECF No. 24-2; *see also* 138 F.4th at 462–63. But on May 21, 2025, the Sixth Circuit Court reversed this decision in full and remanded the case back to the district court. *See* 138 F.4th at 473.

Nineteen days after the Sixth Circuit's remand order, Wesco, Inc. ("Wesco"), Wesco, Inc. Cafeteria Plan and Benefit Plan ("Wesco Plan")—represented by the same counsel who is representing Tiara Yachts—filed a class action suit against BCBSM in the Eastern District of Michigan. ECF No. 1 at PageID.1. BCBSM swiftly moved to dismiss, ECF Nos. 21; 22, but Wesco and the Wesco Plan amended their complaint and added four additional Plaintiffs: Frankenmuth Bavarian Inn, Inc. ("Frankenmuth Inn"), Frankenmuth Bavarian Inn, Inc. Employee Health Benefit Plan & Trust ("Frankenmuth Plan"), Opus Packaging Group Inc. ("Opus"), and Opus Packaging Group Health Insurance Plan ("Opus Plan"). ECF No. 23 at PageID.249, 256.

The six collective Plaintiffs state that they had hired BCBSM "as their Plans' claim administrator," through ASCs, the earliest of which began on December 1, 2003 for Plaintiff Wesco. ECF No. 23 at PageID.256–57, 261. Plaintiffs argue that

this relationship meant that BCBSM functioned as an ERISA fiduciary of Plaintiffs' Plans. *Id.* at PageID.263–64.

Like in *Tiara Yachts*, Plaintiffs allege that BCBSM violated ERISA by using "flip logic" to extract excess fees and by unilaterally enrolling Plaintiffs in its SSP, which unlawfully imposes fees on Plaintiffs for BCBSM to effectively correct its own mistakes at a 30% collection rate. ECF No. 23 at PageID.250–51, 262, 269–78; *see also* ECF No. 1. Plaintiffs specifically allege that BCBSM misrepresents the purpose of the SSP fees as savings—"such as detecting or recovering past overpayments to providers or preventing improper adjudication of future payments"—when the savings are actually "mostly, if not entirely, corrections of BCBSM's own administrative errors." ECF No. 23 at PageID.251. As a result, Plaintiffs claim that the SSP model "incentivizes BCBSM to make or allow more administrative 'errors'…to collect additional fees." *Id.* Plaintiffs argue that this process of imposing a fee to pay itself for correcting errors that it was required to avoid making in the first place violates ERISA's prohibition on fiduciaries self-dealing. *Id.* at PageID.252. Therefore, Plaintiffs allege that BCBSM engaged in prohibited, self-interested, transactions (Count I) and breached its fiduciary duties (Count II) under ERISA. *Id.* at PageID.288–94.

Plaintiffs brought suit in the Eastern District of Michigan because BCBSM resides therein, "some or all fiduciary breaches and prohibited transactions"

occurred in this district, "and a substantial part of the events giving rise to the claim occurred" in this district. *Id.* at PageID.259.

On July 14, 2025, BCBSM requested, in the interest of judicial efficiency and witness convenience, that this Court transfer the case to the Western District of Michigan, where the *Tiara Yachts* case was first filed and is currently pending. ECF Nos. 19; 20. Plaintiffs object, ECF No. 24, and both parties accuse one another of forum-shopping. *See id.* at PageID.309; *see also* ECF No. 27 at PageID.452. BCBSM also moved to dismiss the amended complaint, ECF Nos. 30; 31, but requested that the motion to transfer be addressed first, ECF No. 20 at PageID.112 n. 2.

II. LEGAL STANDARD

"Venue in the federal district courts ordinarily is governed by 28 U.S.C. §§ 1391–1413." *Wayne Cnty. Emps.' Ret. Sys. v. MGIC Inv. Corp.*, 604 F. Supp. 2d 969, 972 (E.D. Mich. 2009). Under § 1391, "[a] civil action may be brought in…a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located…[or where] a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(1). "Generally, a plaintiff's choice of forum will be given substantial deference." *Audi AG & Volkswagon of Am., Inc. v. D'Amato*, 341 F. Supp. 2d 734, 749 (E.D. Mich. 2004). But a plaintiff's forum choice "will not defeat a well-founded motion for a change

of venue." *Id.* at 750. The moving party carries the burden of establishing "the propriety of a change in forum." *Cincinnati Ins. Co. v. O'Leary Paint Co., Inc.*, 676 F. Supp. 2d 623, 630 (W.D. Mich. 2009).

"The 'first-filed' or 'first-to-file' rule is a well-established doctrine that encourages comity among federal courts of equal rank." *Nartron Corp. v. Quantum Rsch. Grp., Ltd.*, 473 F. Supp. 2d 790, 795 (E.D. Mich. 2007) (citation modified). "Under the 'first-to-file' rule, when duplicative lawsuits are pending in separate federal courts, the entire action should be decided by the court in which an action was first filed." *Robinson v. Nat'l Collegiate Athletic Assoc.*, No. 2:23-CV-12355, 2025 WL 2773123, at *4 (E.D. Mich. Sept. 26, 2025) (citation modified). Specifically, "when actions involving nearly identical parties and issues have been filed in two different district courts, the court in which the first suit was filed should generally proceed to judgment." *Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assocs., Inc.*, 16 F. App'x 433, 437 (6th Cir. 2001) (citation modified). District courts have discretion to consider whether equity demands invocation of this flexible rule. *See Nartron Corp.*, 473 F. Supp. 2d at 795 (noting that the doctrine is "not a strict rule" that can give way to strong policy considerations or compelling circumstances).

"Factors to be considered in the application of the first-to-file rule are (1) the chronology of the actions; (2) the similarity of the parties involved; and (3) the

similarity of the issues at stake." *Id.* (internal quotation marks and citations omitted). Where a court determines that "the first-to-file rule applies to a second-filed case, [the court] has discretion to transfer, stay, or dismiss the second case." *Wizie Com LLC v. Webjet Mktg. N. Am., LLC*, No. 17-cv-11920, 2017 WL 4707487, at *6 (E.D. Mich. Oct. 20, 2017) (internal quotation marks and citation omitted). If the three factors support applying the first-to-file rule, "the court must also determine whether any equitable considerations…merit not applying the first-to-file rule in a particular case." *Baatz v. Colum. Gas. Transmission, LLC*, 814 F.3d 785, 789 (6th Cir. 2016).

III. DISCUSSION

BCBSM argues that the case should be transferred to the Western District of Michigan under the first-to-file rule because the *Tiara Yachts* case was filed first in the Western District and the present matter involves nearly identical issues and parties. ECF No. 20 at PageID.114–18. BCBSM adds that Tiara Yachts "would be a member of the putative class on whose behalf the Wesco Plaintiffs bring their claims." *Id.* at PageID.116. Plaintiffs argue that the first-to-file rule is not appropriate because the present case is a class action whereas *Tiara Yachts* "involves a different party advancing additional, separate claims against BCBSM." ECF No. 24 at PageID.309, 312–13, 316. Plaintiffs also argue that there are many other ERISA fee suits against BCBSM filed in the Eastern District before *Tiara Yachts* was filed—including one involving Wesco, which BCBSM has not sought to transfer—

suggesting that BCBSM might be cherry-picking and forum-shopping to litigate in a district it views as more favorable, given the district court's original *Tiara Yachts* decision. *Id.* at PageID.309, 312, 314–16, 322 (referring to *Wesco Inc., et al. v. Blue Cross Blue Shield of Michigan*, No. 2:24-cv-12986 (E.D. Mich. Nov. 11, 2024)). For reasons provided below, this Court finds that transferring to the Western District of Michigan is proper under the first-to-file rule.

A. Chronology of Actions

For the first factor when considering whether the first-to-file rule applies, "[t]he dates to compare for chronology purposes of the first-to-file rule are when the relevant complaints are filed." *Id.* at 790. As stated, Tiara Yachts filed its suit in the Western District on July 1, 2022. *See* ECF No. 20-2 at PageID.151. Plaintiffs then filed this class action in the Eastern District on June 9, 2025, after the Sixth Circuit reversed the district court's dismissal of *Tiara Yachts*, meaning that the *Tiara Yachts* was pending—and remains—in the Western District at the time that Plaintiffs filed this class action. *See* ECF No. 1. These dates plainly show that the *Tiara Yachts* case in the Western District was filed first.[1] *See Baatz*, 814 F.3d at 790.

[1] To the extent that Plaintiffs point to other pending cases against BCBSM in the Eastern District that predate *Tiara Yachts*, this argument is unavailing because the first-to-file rule is a conjunctive test in which all three factors must be met. *See Nartron Corp.*, 473 F. Supp. 2d at 795. Because the other mentioned cases are not about similar issues *and* with similar parties, they are not relevant *duplicative* cases for this Court to consider. *See Zide Sport Shop*, 16 F. App'x at 437. Thus, the first

B. Similarity of Parties

For the second factor, courts apply the first-to-file rule "when the parties in the two actions substantially overlap, even if they are not perfectly identical." *Id.* (citation modified). Here, there is no dispute that BCBSM is the same defendant in this case and the *Tiara Yachts* case. There is also no dispute that the Plaintiffs are different. Thus, the question is whether the parties are sufficiently similar to apply the first-to-file rule where a subsequent class action could include the plaintiff in an earlier filed case. This Court finds that it does.

An entity is not a party to a case "merely by virtue of being within the putative class" for a class action that has not yet been certified. *Id.* (citing *Smith v. Bayer Corp.*, 564 U.S. 299 (2011)). But, "for purposes of identity of the parties when applying the first-to-file rule, courts have looked at whether there is substantial overlap with the putative class even though the class has not yet been certified." *Id.* (collecting cases). As the Sixth Circuit explained:

> The reason is fairly straightforward: if the opposite rule were adopted, the first-to-file rule might never apply to overlapping class actions [or, an individual suit and a class action] as long as they were filed by different plaintiffs. Litigating a class action requires both the parties and the court to expend substantial resources. Perhaps the most important purpose of the first-to-file rule is to conserve these resources by limiting duplicative cases.

---

factor weighs in favor of transferring the class action to the Western District. *See Nartron Corp.*, 473 F. Supp. 2d at 795.

Id. at 791.

For instance, in *Baatz*, a group of landowners brought a class action against a gas company in 2012 in the Southern District of Ohio, and in 2014, another group of landowners brought an individual suit against the same gas company in the Northern District of Ohio. *Id.* at 788. The claims were nearly identical, and the group of landowners in the 2014 action would fall within the 2012 suit's putative class. *Id.* The Sixth Circuit held that the first-to-file rule applied because holding otherwise would be ineffective, inefficient, and unduly burdensome. *Id.* at 791. Specifically, the Sixth Circuit held that even though the class action would include additional entities, "what matters for our purposes is that [the defendant] and the [plaintiffs in the non-class action suit] would be parties to both actions." *Id.* And even if the plaintiffs would opt out of the class were it certified, because the plaintiffs "undoubtedly [could] be members of [that] class if it were certified," the parties were sufficiently similar for the first-to-file rule to apply. *Id.*; *see also Heyman v. Lincoln Nat'l Life Ins. Co.*, 781 F. App'x 463, 477 (6th Cir. 2019) (holding that the plaintiff being able to opt out of a class did not "destroy the similarity of the parties").

The circumstances in *Baatz* are analogous to the present case insofar as Tiara Yachts could be a member of Plaintiffs' class action. *See Baatz*, 814 F.3d at 791. Indeed, as the Sixth Circuit held, Tiara Yachts' individual capacity to bring suit does not alter its eligibility in Plaintiffs' class action. *See id.*; *see also Heyman*, 781 F.

App'x at 477 (holding that the plaintiffs in a class action and the plaintiff in a subsequent suit substantially overlapped because both were covered by the same insurance policy and "had their benefits reduced by receipt of Social Security disability benefits").

Notably, these cases involve two class action plaintiffs or a class action as the first-filed lawsuit. Although there appears not to be directly on-point precedent about the first-to-file rule's application to a class action that was filed *after* an individual action, this Court finds that it may still analyze and apply the first-to-file rule in this scenario. *See Townsend v. Vasbinder*, No. 04-CV-74846, 2007 WL 4557715, at *3, *4 n. 4 (E.D. Mich. Dec. 19, 2007) (applying the first-to-file rule to petitioner's individual suit that was filed *before* a similar class action suit and dismissing the petitioner's suit as duplicative and subsumed by the class action in consideration of equity). As found in *Townsend*, the first-to-file rule applied to the petitioner's individual suit where "[s]hortly after [he] filed his habeas petition, a class-action complaint was filed," because the claims were "essentially identical" in both suits. *Id.* at *2–3, *4 n. 4. The district court dismissed the petitioner's suit for equitable consideration of extraordinary circumstances—noting that the petitioner would benefit as a class member with representation instead of proceeding *pro se* and that the class members already received a favorable ruling—but the district court explicitly acknowledged that the first-to-file rule generally favors "proceeding to

judgment in the first-filed action." *Id.* at *4 n. 4 (citing *Zide Sport Shop*, 16 F. App'x at 437).

Accordingly, this Court finds that the first-to-file rule can apply to the present circumstances and further finds that the second factor weighs in favor of applying the rule to this matter. *See id.*; *see also Baatz*, 814 F.3d at 791. And as explained below, this Court will find that equitable considerations like those in *Townsend* are not present in this matter and do not weigh against transferring the case.

C. Similarity of Issues

To determine whether issues or claims are similar under the first-to-file rule, they do not need to be identical. *See Heyman*, 781 F. App'x at 477. Instead, they must "substantially overlap, be materially on all fours, and have such an identity that a determination in one action leaves little or nothing to be determined in the other." *Id.* (citation modified).

Here, the issues are substantially similar. In both lawsuits, the plaintiffs challenge BCBSM's fee scheme—particularly relating to its SSP and "flip logic"—as an administrator for employers with self-funded health benefit plans. *See* ECF Nos. 23 at PageID.270–82; 20-2 at PageID.132–39. And, in fact, the plaintiffs bring the exact same two counts: breach of fiduciary duty and engagement in prohibited transactions under ERISA. *See* ECF Nos. 23 at PageID.288–94; 20-2 at PageID.146–49. They also both seek similar kinds of declaratory relief and damages. *See* ECF

Nos. 23 at PageID.295–96; ECF No. 20-2 at PageID.149–51. The language and phrasing in both complaints—notably drafted by the same counsel—reveals no material distinctions between the core issues in both cases. *See Heyman*, 781 F. App'x at 477 (holding that the claims in the two lawsuits were not identical in all respects but nevertheless substantially similar, in part because they were both "drafted by the same attorney and use identical language throughout much of the two filings").

To the extent that the *Tiara Yachts* case raises additional factual allegations about breaches of fiduciary duties or that the nature of the present case is procedurally different as a class action, the same core allegations drive both cases to "substantially overlap." *See id*. Thus, even if the *Tiara Yachts* case is "more comprehensive," the fact that both cases raise breach of fiduciary duty allegations about the SSP renders the issues sufficiently similar for the first-to-file rule. *See Nartron Corp.*, 473 F. Supp. 2d at 796 (finding that [a]lthough [one] action is more comprehensive in that it involves more patents, both actions call into question [a specific patent] and [the plaintiff's] rights thereunder"). Thus, this Court finds that the similarity of the issues weighs in favor of applying the first-to-file rule. *See id.*

4. Equitable Considerations

Because this Court has found that applying the first-to-file rule is appropriate, this Court must next consider any evidence that, in the spirit of equity, might weigh

against a transfer. *Baatz*, 814 F.3d at 792 ("Courts have repeatedly warned that the first-to-file rule is not a mandate directing wooden application of the rule without regard to extraordinary circumstances" and other relevant considerations) (internal quotation marks and citation omitted). These considerations include "inequitable conduct, bad faith, anticipatory suits, and forum shopping." *Nartron Corp.*, 473 F. Supp. 2d at 795 (internal quotation marks and citations omitted). "Nevertheless, deviations from the rule should be the exception, rather than the norm." *Heyman*, 781 F. App'x at 478 (internal quotation marks and citations omitted).

Here, there are "no equitable considerations [that] render application of the [first-to-file] rule improper." *Id.* Frankly, this Court finds evidence that suggest both parties may be forum shopping. BCBSM's motion suggests an effort to litigate before a Judge that has already ruled in its favor, but Plaintiffs' decision to file this class action in the Eastern District less than three weeks after the Sixth Circuit ruled in its favor on the Western District case also suggests an effort to litigate before a Judge that may be more favorable in the Eastern District. Accordingly, to the extent that there is bad faith, inequitable conduct, or forum shopping, both parties' actions render these considerations in neither of their favors. *See Nartron Corp.*, 473 F. Supp. 2d at 795. And as stated, the extraordinary circumstances present in *Townsend* are not present here. *See* 2007 WL 4557715 (dismissing the petitioner's suit namely

because he would benefit from proceeding as a member of the subsequently filed class action).

For these reasons, this Court finds that the first-to-file rule applies and no equitable considerations appear to weigh against transferring this case to the Western District.[2] *See id.* Therefore, the case will be transferred.

B. Motions to Dismiss

Briefly, this Court finds that BCBSM's motion to dismiss the initial complaint, ECF Nos. 21; 22, is moot because Plaintiffs filed an amended complaint, ECF No. 23. *See Klein v. Caterpillar Inc.*, 581 F. Supp. 3d 912, 919 (E.D. Mich. 2022) ("Generally, an amended complaint supersedes the original complaint, thus making the motion to dismiss the original complaint moot.") (internal quotation marks and citations omitted). In fact, BCBSM filed a renewed motion to dismiss the amended complaint, ECF Nos. 30; 31, so its first motion to dismiss the initial complaint is moot and will be denied accordingly. *See id.*

Additionally, because this Court is granting BCBSM's motion to transfer, this Court will also deny without prejudice BCBSM's motion to dismiss the amended

[2] Because transferring the case to the Western District of Michigan is appropriate under the first-to-file rule, this Court need not consider BCBSM's alternative arguments for transfer under 28 U.S.C. § 1404(a). *See City of Columbus v. Hotels.com, L.P.*, No. 2:06-cv-677, 2007 WL 2029036, *3 (S.D. Ohio July 10, 2007) ("Because the first-to-file rule clearly supports the recommendation to transfer venue to the Northern District of Ohio, there is no need for the Court to address Plaintiffs' objections with respect to the § 1404(a) factors.").

complaint, ECF No. 30; 31, to allow BCBSM to refile its motion before the Western District Court. *See Casey v. Morrison*, No. 2:22-cv-11431, 2023 WL 4424246, at *2 (E.D. Mich. July 10, 2023) ("And because of the transfer, the Court will deny the motion to dismiss…as moot. The denial of the motion is without prejudice…."); *see also Upshaw v. Nat'l Basketball Assoc.*, No. 2:18-CV-13301, 2019 WL 1932062, at *3 (E.D. Mich. Apr. 30, 2019) (finding that because the motion to transfer was granted, [t]he pending Motions to Dismiss…are denied as moot and the case is closed.") (citation modified).

IV. CONCLUSION

Accordingly, it is **ORDERED** that Defendant's Motion to Transfer, ECF Nos. 19; 20, is **GRANTED**.

It is further **ORDERED** that Defendant's Motion to Dismiss the Complaint, ECF Nos. 21; 22, is **DENIED AS MOOT**.

It is further **ORDERED** that Defendant's Motion to Dismiss the Amended Complaint, ECF Nos. 30; 31, is **DENIED WITHOUT PREJUDICE**.

It is further **ORDERED** that the Clerk of the Court is **DIRECTED** to **TRANSFER** the above-captioned case to the United States District Court for the **Western District of Michigan**.

IT IS SO ORDERED.

This is not a final order but closes the above-captioned case in this Court only.

/s/Susan K. DeClercq
SUSAN K. DeCLERCQ
United States District Judge

Dated: March 18, 2026