

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MADALYN BROWN, et al.,
Plaintiffs,
v.
ACCELLION, INC.,
Defendant.

Case No. [5:21-cv-01155-EJD](#)

**ORDER DENYING DEFENDANT'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED**

Re: Dkt. No. 81

Defendant Accellion moves pursuant to Civil Local Rules 3-12(b) and 7-11(a) to relate *Ace American Insurance Company v. Accellion, Inc.*, No. 4:21-cv-09615-YGR (“*Ace American*”) to *Brown v. Accellion, Inc.*, No. 5:21-cv-01155-EJD (“*Brown*”), which is pending before the undersigned. *See* Administrative Motion to Consider Whether Cases Should Be Related (“Mot.”), Dkt. No. 81. Plaintiff in *Ace American* opposes the motion. *See* Plaintiff’s Opposition to Defendant’s Administrative Motion to Consider Whether Cases Should Be Related (“Opp.”), Dkt. No. 82.

Pursuant to Civil Local Rule 3-12(a), actions are related when (1) they “concern substantially the same parties, property, transaction or event;” and (2) “[i]t appears likely that there will be an unduly burdensome duplication of labor or expense or conflicting results if the cases are conducted before different Judges.” Defendant argues that the *Ace American* action should be related because it is based on the same conduct at issue in *Brown* (and the cases now consolidated into *Brown*). The Court disagrees.

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1 **1. The plaintiffs are not similarly situated.** Ace American provided cyber insurance
2 coverage to a Boston law firm (“the law firm”). Defendant provided collaboration system
3 software services to the law firm pursuant to a contract. The law firm and Defendant were thus in
4 direct contractual privity, and the rights and duties owed were governed, at least in part, by this
5 contract. The law firm was the victim of a ransomware attack in which a bad actor exfiltrated
6 highly confidential files from the law firm’s server. Consequently, the law firm had to pay a \$2
7 million ransom demand to avoid having the confidential files disclosed to the public. Because
8 Ace American was the firm’s cyber insurer, Ace American had to repay the \$2 million to the firm.

9 The plaintiffs in *Brown* and the consolidated class actions are “individuals whose private
10 information . . . was exposed because of the failure of Accellion, Inc. to safeguard and protect the
11 [plaintiff’s] exposed sensitive information.” *Brown* Complaint ¶ 1. No plaintiff in *Brown* was in
12 direct contractual privity with Accellion. Instead, the *Brown* plaintiffs had some interaction with a
13 third-party who used the Accellion file transfer appliance (“FTA”), and as a result their personally
14 identifiable information (“PII”) was exposed. Thus, in contrast to *Ace American*, where the claims
15 at issue largely relate to a breach of contract, the claims in *Brown* arise out of alleged violations of
16 common law and relevant statutes.

17 **2. The claims presented in the cases are different.** As noted, the *Brown* complaint (and
18 the complaints consolidated therein) raise claims against Accellion for negligence and for
19 violations of state consumer protection laws. In contrast, the *Ace American* complaint raises five
20 claims—negligence, breach of contract, and three misrepresentation claims that arise out of the
21 law firm’s transactions with Accellion. While both cases assert a claim of negligence, the claims
22 are different. The allegations of negligence in *Ace American* relate mostly to Accellion’s
23 negligence in failing to notify the law firm about the availability of a patch to fix the vulnerability
24 in its software, whereas the negligence allegations in the *Brown* complaint relate almost entirely to
25 Accellion’s failure to adequately safeguard and protect individuals’ PII. Because the negligence
26 claims are different and require different evidence to resolve, the danger of “conflicting results”

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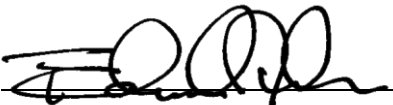
discussed in Civil Local Rule 3-12 is not applicable.

3. The cases involve different facts. Accellion and Ace American had a long-standing relationship, which forms the basis of many of the claims asserted in *Ace American*. Additionally, unlike *Brown*, *Ace American* involves a contract between Accellion and the law firm. The contract has various limitation of liability provisions and thus separate motion practice will be required to resolve the applicability of these indemnification provisions. Finally, the *Brown* plaintiff has requested a jury trial, while the *Ace American* plaintiff has requested a bench trial. The two cases will thus require different and separate triers of fact.

For these reasons, the Court **DENIES** Defendant's motion to relate the *Ace American* and *Brown* cases. See *Asus Computer Int'l v. Interdigital, Inc.*, 2015 WL 13783764 (N.D. Cal. June 15, 2015) ("The Court finds that the cases can proceed before different judges without being unduly burdensome because there are [a] myriad [of] case-specific facts and issues that do not overlap, even if the cases both involve similar licensing agreements, and [] it is unlikely that there would be conflicting results were the cases to be tried before different judges.").

IT IS SO ORDERED.

Dated: March 14, 2022


EDWARD J. DAVILA
United States District Judge

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