

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW P. HAAG, an individual,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 06-5634
v.	:	
	:	
JANNEY MONTGOMERY SCOTT, LLC	:	
	:	
Defendant.	:	

**MEMORANDUM**

Presently pending is Defendant’s Motion to Dismiss Plaintiff’s Complaint Under the “First Filed” Rule, and Plaintiff’s response thereto. For the reasons stated below, Defendant’s Motion will be denied.

**Factual and Procedural Background**

Plaintiff is an adult individual and employee of Defendant. Defendant is a Delaware corporation with offices located nationwide, and allegedly headquartered in Philadelphia.

In his Complaint, Plaintiff Haag pleads a collective action, on behalf of himself and others similarly situated, to recover unpaid overtime pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (hereinafter “the FLSA”). Plaintiff alleges that he and every other broker employed by Defendant are routinely required to work in excess of forty (40) hours a week without receiving overtime compensation.

In it’s Motion to Dismiss, Defendant asserts that Plaintiff’s Complaint should be dismissed under the “first-filed” rule because identical actions, Farhy v. Janney Montgomery Scott et al. (C.A. No. 06-3202) and Incitti v. Janney Montgomery Scott et al.(C.A. No. 3969), are already pending in this court. Plaintiff responds that the Complaint should not be dismissed for

the following reasons: (1) the present action only asserts federal FLSA claims while the other actions pending before the court assert both federal and state claims; (2) all of the related actions were filed by separate parties; and (3) all of the related actions are pending before the same court.

### **Discussion**

Under the “first-filed” rule, in all cases of federal concurrent jurisdiction, the court which has first possession of the subject must decide it. EEOC v. University of Pennsylvania, 850 F.2d 969, 971 (3d Cir. 1988) (quoting Crosley Corp. v. Hazeltine Corp., 122 F.2d 925, 929 (3d Cir. 1941)). The rule gives a court the power to enjoin subsequent proceedings involving the same parties and issues already before another district court. Id.

Currently, the Farhy, Incitti, and Haag actions are pending before this Court. The “first-filed” rule was designed to deal with subsequent proceedings involving the same parties and issues pending before another district court. As Plaintiff points out, Federal Rule of Civil Procedure 42(a) provides an effective tool for consolidating actions pending before the same court. As such, although the instant action was filed after Farhy and Incitti, the “first-filed” rule does not require dismissal.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW P. HAAG, an individual,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 06-5634
v.	:	
	:	
JANNEY MONTGOMERY SCOTT, LLC	:	
	:	
Defendant.	:	

**ORDER**

Presently pending is Defendant’s Motion to Dismiss Plaintiff’s Complaint Under the “First-Filed” Rule, and Plaintiff’s response thereto.

**AND NOW**, this 26th day of April 2007, **IT IS HEREBY ORDERED THAT** Defendant’s Motion to Dismiss (Docket No. 2) is **DENIED**.

**IT IS FURTHER ORDERED THAT** Defendant answer Plaintiff’s Complaint within twenty (20) days of the date of this Order.

**IT IS FURTHER ORDERED THAT**, after the answer is filed, the Deputy Clerk schedule a consolidated pre-trial conference of all similar civil actions pending against Defendant and assigned to this court’s calendar.

BY THE COURT:

s/ Clifford Scott Green, S.J.

CLIFFORD SCOTT GREEN, S.J.