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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9	SECURITIES AND EXCHANGE)	No. CV-09-00443-PHX-GMS
10	COMMISSION,)
	Plaintiff,)
11	vs.)
12)
13	MARTIN G. FRASER; DON W.)	
14	WATSON; EDWARD W. O'BRIEN;)	
	GARY M. OPPER,)
15	Defendants.)
16)

ORDER

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18 Pending before three Courts in this District are various motions to transfer cases to a
19 single Judge. For the following reasons, the Court grants these motions in part and denies
20 them in part.

21

BACKGROUND

22 The motions to transfer arise in three cases involving Defendants Fraser, Watson,
23 O'Brien, and Opper, all of whom were officers of CSK Auto Corporation ("CSK"). The case
24 before this Court, CV-09-00443-PHX-GMS ("Civil 443"), is based on a complaint filed by
25 the Securities and Exchange Commission against all four defendants on March 5, 2009.
26 (Dkt. # 1.) The complaint asserts various violations of the securities laws stemming from
27 Defendants' alleged involvement in fraudulently hiding uncollectible receivables, over-
28 recognizing vendor allowances, and misrepresenting CSK's financial performance.

1 **I. Which Judge Should Rule on the Transfer Motions?**

2 The Local Rules provide that if a party believes that cases should be transferred to a
3 single Judge, the motion to transfer “shall be filed in the case with the lowest case number
4 and shall be heard by the Judge assigned to that case.” LRCiv 42.1(a)(1); *see also* LRCrim
5 5.3 (incorporating LRCiv 42.1 into the rules for transfer of related criminal cases).
6 Application of this rule is ambiguous in the context of motions to transfer civil and criminal
7 cases, as civil and criminal case numbers are assigned separately and therefore are not a
8 reliable indication of which case was filed first. Here, Civil 443 was filed before either
9 Criminal 372 or Criminal 365. Thus, this Court is the proper forum for deciding the transfer
10 motions. The Court will therefore consider all of the transfer motions that have been filed.

11 **II. Should the Cases be Transferred to a Single Judge?**

12 The Local Rules provide five factors the Court may consider in deciding whether to
13 transfer cases to a single Judge:

14 Whenever two or more cases are pending before different
15 Judges and any party believes that such cases (A) arise from
16 substantially the same transaction or event; (B) involve
17 substantially the same parties or property; (C) involve the same
18 patent, trademark, or copyright; (D) calls [sic] for determination
of substantially the same questions of law; or (E) for any other
reason would entail substantial duplication of labor if heard by
different Judges, any party may file a motion to transfer the case
or cases involved to a single Judge.

19 LRCiv 42.1(a)(1); *see also* LRCrim 5.3.

20 Here, the nature of the two criminal cases is sufficiently similar such that transfer to
21 a single Judge is appropriate. The cases do arise from substantially the same transaction or
22 event (namely, the alleged securities fraud scheme) and call for similar legal determinations.
23 Moreover, although Criminal 372 portends extensive litigation, a Judge would not be overly-
24 burdened by presiding over Criminal 365 as well because that case is at the sentencing stage.
25 Indeed, because the guilty pleas of Defendants O’Brien and Opper in Criminal 365 are likely
26 to be an important issue in Criminal 372, transfer of both cases to a single Judge will promote
27 an efficient resolution of any such issues.

1 However, the civil case, while involving factual questions similar to the criminal
2 cases, will not involve the numerous criminal law issues likely to come up in those
3 prosecutions. Moreover, given the extensive nature of the litigation likely in both Civil 443
4 and Criminal 372, a division of labor between two Judges would likely be more conducive
5 to judicial efficiency than would transfer to a single Judge. Therefore, the Court will transfer
6 the two criminal cases to the same Judge, but will not transfer the civil case to that Judge.

7 **III. Which Judge Should Preside Over the Transferred Cases?**

8 Because the civil case will not be transferred, it will remain with this Court. In
9 determining which Judge should preside over the criminal cases, the Court must consider
10 four factors: (1) whether substantive matters have been considered in a case, (2) which Judge
11 has the most familiarity with the issues involved in the cases, (3) whether a case is reasonably
12 viewed as the lead or principal case, and (4) any other factor serving the interest of judicial
13 economy. LRCiv 42.1(a)(4); *see also* LRCrim 5.3.

14 Here, the first, second, and fourth factors do not carry any appreciable weight, as both
15 cases are relatively new and neither Judge has more familiarity with the issues than the other.
16 However, Criminal 372 is more properly viewed as the lead or principal case, as it involves
17 some thirty-one counts against Defendants Fraser and Watson, alleging a wide variety of
18 misconduct, including securities violations, conspiracy, and mail fraud. Criminal 365, on the
19 other hand, merely involves single counts of obstruction of justice against O'Brien and
20 Opper. The Court will therefore transfer Criminal 365 to the Judge presiding over Criminal
21 372, Judge Bolton.

22 **CONCLUSION**

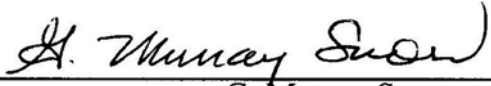
23 The Court concludes that Criminal 365 and Criminal 372 should be transferred to the
24 same Judge, in this case Judge Bolton, but that Civil 443 should remain with this Court.

25 **IT IS THEREFORE ORDERED** that the various motions to transfer filed in these
26 three cases (Dkt. # 29 of this case; Dkt. # 29 of CR-09-00365-PHX-FJM; and Dkt. # 30 of
27 CR-09-00372-PHX-SRB) are **GRANTED IN PART** and **DENIED IN PART**.

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IT IS FURTHER ORDERED that CR-09-00365-PHX-FJM is transferred to Judge Bolton.

DATED this 13th day of May, 2009.



G. Murray Snow
United States District Judge